The impact of Conservative legislation on trade union practices, procedures and behaviour

Lockwood, Graeme Hugh

The Impact of Conservative Legislation on Trade Union Practices, Procedures and Behaviour

by

Graeme Lockwood

CERTIFICATE OF ORIGINALITY

This is to certify that I am responsible for the work submitted in this thesis, that the original work is my own except as specified in acknowledgements or in footnotes, and that neither this thesis nor the original work contained herein has been submitted to this or any other institution for a higher degree.

ABSTRACT

The role of the law in regulating trade unions has long been contested and unions have fiercely defended their organisational autonomy. In the 1980s Conservative legislation was seen as a full frontal attack on trade unionism, deeply resented, resisted and thought by many to be designed to 'destroy' union power. Initial research cast some doubts on the extent to which legislation was having its presumed intended impact. However, as always with the law, it takes some time for real effects on behaviour to become apparent. The research conducted for this thesis is designed to provide an integrated and comprehensive evaluation of the long-term impact of the post-Conservative legislation on the procedures, practices and behaviour of trade unions.

The research constitutes the first real attempt to focus on all the Conservative legislation pertaining to internal union government and to analyse its impact on the internal affairs of trade unions. In doing so, the thesis contributes to our knowledge of the impact of the legislation in the following respects:

First, it adds to and informs the existing literature relating to union election ballots, industrial action ballots and political funds, showing that ballots have become widely accepted by trade unions as key elements both in carrying out consultation with members and in developing union policies.

Second, the thesis provides a completely original insight into the impact of the extensive package of statutory rights handed to members in an attempt to regulate and control trade union internal affairs. None of the previous studies have presented data on this strand of the Conservative individualistic approach.

Finally, the research reveals the impact of Conservative legislation on the pre-existing methods of union decision-making for determining key issues such as the appointment of senior officials, industrial action, disciplinary rules and procedures, and union policy. This informs current knowledge as the extant literature inadequately identifies the changes that have occurred in union government in this respect.

The research involved gathering data from seven case-study trade unions and the carrying out of 101 interviews. These included interviews with trade union officials, members, the Commissioner and Assistant Commissioner for the Rights of Trade Union Members, the Certification Officer and the Deputy General Secretary of the Trades Union Congress.

The main conclusions can be summarised as follows. First, whilst Conservative legislation caused changes to the procedures, practices and behaviour of trade unions it did not transform the political complexion of trade unions. Second, the compliance of trade unions with the Conservative legislative requirements provided credibility and legitimacy for trade union activities and the way trade unions conducted their internal affairs. Third, trade unions have adopted a hybrid form of union government reflecting traditional collective participation and the Conservative individualistic approach. Finally, Conservative legislation designed to empower the rank-and-file trade union member did not result in widespread challenges to the actions of their trade unions or of senior officials. The cohesive nature of the relationship that generally existed between a trade union and its membership was maintained. More generally, this demonstrates that unions, far from being prisoners of their history, are capable of responding relatively quickly and creatively to the historical pressures of change and of re-configuring their structures, policies and procedures to accommodate both legal threats and the continually developing expectations of their memberships.

TABLE OF CONTENTS

List of Tables

List of Appendices

List of Abbreviations

AC	Law Reports Appeal Cases
ALLER	All England Law Reports
APEX	Association of Professional Executive Clerical and Computer Staff
ASLEF	Associated Society of Locomotive Engineers and Firemen
AUEW	Amalgamated Union of Engineering Workers
BFAWU	Bakers Food and Allied Workers Union
Ch	Law Reports Chancery Division
CO	Certification Officer
CPSA	Civil and Public Services Union
CPS	Centre for Policy Studies
CROTUM	Commissioner for the Rights of Trade Union Members
CPAUIA	Commissioner for the Protection Against Unlawful Industrial Action
EA	Employment Act
EAT	Employment Appeal Tribunal
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
EETPU	Electrical Electronic Telecommunications and Plumbing Union
EHRR	Law Reports European Human Rights Review
GMBATU	General, Municipal, Boilermakers and Allied Trades Union
HMSO	Her Majesties Stationery Office
ILO	International Labour Organisation
IRLR	Industrial Relations Law Reports
MEP	Member of the European Parliament
NATFHE	National Association of Teachers in Further and Higher Education

NALGO	National Association of National and Local Government Officers
NASUWT	National Association of School Masters and Union of Women Teachers
NEC	National Executive Committee
NIRC	National Industrial Relations Court
NUM	National Union of Mineworkers
NUPE	National Union of Public Employees
NUR	National Union of Railwaymen
NUS	National Union of Seamen
PEC	Principal Executive Committee
QB	Law Reports Queens Bench
RMT	National Union of Rail, and Maritime, and Transport Workers
SOGAT	Society of Graphical and Allied Trades
TUA	Trade Union Act
TGWU	Transport and General Workers Union
TUC	Trades Union Congress
TULRCA	Trade Union and Labour Relations (Consolidation) Act 1992
TURER	Trade Union Reform an Employment Rights Act 1993
UCATT	Union of Construction Allied Trades and Technicians
USDAW	Union of Shop, Distributive and Allied Trades

Case References

Associated British Ports V TGWU [1989] IRLR 399 HL

Bonsor v Musicians' Union [1956] AC 104

Blackpool and Fylde College v NATFHE ICR 648

Boxhall and Others v CPSA [1998] EAT

Braithwaite's case [1922] 2 AC 440

Breen v Amalgamated Engineering Union and Others [1971] 1 ALLER 1148

Carter v United Society of Boilermakers & Others [1915] 32 TLR 40

Cheall v APEX [1983] 1ALLER 1130

Cheall v UK [1986] 8 EHRR 74

Edwards v SOGAT [1971] Ch 354

England v PTC [1998] EAT

Fire Brigade v Knowles [1996] IRLR 337

Foss v Harbottle [1842] 2 Hare 461

Hodgson & Others v Nalgo [1972] 1 ALLER

Home Delivery Service v Shacklecloth 1984 IRLR 470

Hughes v TGWU [1985] IRLR 382

Lawlor & Others v Union of Post Office Workers [1965] 1 ALLER 353

Lee v Showmen'Guild of Great Britain [1952] 2 QB 329

Leigh v NUR [1970] Ch 326

London Underground v NUR [1989] IRLR 341 QB

Maclean v Workers Union [1929] 1Ch 602

NACODS v Gluchowshi [1996] IRLR 252

NALGO v Kilhorn [1990] IRLR 464

NWL v Woods [1975] IRLR 234

Paul v NALGO [1987] IRLR 43

Post Office v Union of Communication Workers [1990] ICR 258

Roebuck v NUM (Yorkshire Area) [1977] ICR 573

Tanks and Drums Ltd v TGWU [1992] ICR 1

Taylor v NUM (Yorkshire Area) [1984] IRLR 445

Taylor v NUS [1967] 1 ALLER 767

TGWU v Webber 1990 ICR 711

West Midlands Travel Ltd v TGWU [1994] IRLR 578

White & Others v Kuzych [1951] AC 585

White v Kuzych [1951] AC 585

Yorkshire Miners Association v Howden [1905] AC 256

List of Statutes

Employment Act 1980

Employment Act 1982

Employment Act 1988

Employment Act 1990

Employment Relations Act 1999

Industrial Relations Act 1971

Trade Union Act 1871

Trade Union Act 1876

Trade Disputes Act 1906

Trade Union Act 1913

Trade Union (Amalgamations) Act 1917

The Societies Miscellaneous Provisions Act 1964

Trade Union Labour Relations Act 1974

Trade Union Act 1984

Trade Union Labour Relations (Consolidation) Act 1992

Trade Union Reform and Employment Rights Act 1993

Certification Officer Declarations

Civil and Public Services Union [1997] CO/1964/14

Prison Officers Association [1996]CO/1913/

Stemp and Lowes v NUR, [1986] CO/ D/4-9/86

USDAW v Savage [1994] CO/D/1-2/94

Chapter 1 – Introduction: The Legal Regulation of Trade Unions

1.1 Introduction

Throughout the 1980s and early 1990s successive Conservative governments introduced legislation regulating the internal affairs of trade unions. Conservative trade union law constituted a fundamental change from previous strictures in relation to the scope and methods of legislative intervention in union government (Wedderburn 1991: 203; Fredman 1992: 25; Fosh *et al.* 1993: 22; Hendy 1993: 16; Miller and Steele 1993: 224; Martin *et al.* 1995: 146). The essence of the legislation was not novel, for traces of it are to be found in the Donovan Commission in 1966, Barbara Castle's 'In Place of Strife' January 1969, the Industrial Relations Act 1971 and the American Landum-Griffin Act 1959. Nevertheless, this legislation was a significant development, because for the first time it sought to impose a prescriptive template outlining in detail how unions should conduct their affairs (Undy *et al.* 1996: 75). The legislation, which despite the election of two successive Labour governments since 1997 remains little changed, now intervenes in union affairs by prescribing secret ballots for elections, union political funds and industrial action (Labour Research 1993: 16; Moher 1995: 32). It also provides the individual member with an extensive array of rights, which they can enforce against their union. The legal changes sought to make trade union governance more responsive to the wishes of the membership and to limit the permissible range of industrial action (Democracy in Trade Unions 1983: 1, 17). The objective of this thesis is to determine the impact of these legislative changes on trade union procedures, practices and behaviour. Although most people are familiar with the term 'trade union', a statutory definition is necessary in order to determine whether an organisation can be entered on the list of trade unions maintained by the Certification Officer. Section 1 of TULRCA 1992, characterises as a union:

> An organisation (whether permanent or temporary) which ... consists wholly or mainly of workers of one or more descriptions, and is an organisation whose principal purposes include the regulation of relations between workers of that description or those descriptions, and employers or employers' associations'.

Any trade union may apply to the Certification Officer for a certificate stating that it is an 'independent trade union' under ss. 5 to 9 of TULRCA 1992. An 'independent'

trade union means that it is not under the domination or control of an employer, nor liable to interference relating to such control (Lockwood and Williams 2003: 129). An employer who fears that a trade union may be gaining membership from among his/her workforce might simulate or nurture a staff association, a quasi-union active solely within the firm. Such a 'house', 'sweetheart or 'company' union may represent its members only meekly, being rather more of a sophisticated tool of human resource management (Bowers 2000: 408). However, the consequence of their lack of independence is that they cannot claim a number of significant legal entitlements. These include the right to receive information for bargaining purposes, the right to be consulted about redundancies and transfers of undertakings and the right of statutory recognition (Lockwood and Williams 2003: 129). Nevertheless, it should be noted that many trade unions have criticised the Certification Officer for liberality in granting certificates, which has seen 'company', 'sweetheart' and 'house' unions regularly graduating to independent status (Bowers 2000: 409).

This chapter contextualises the thesis. Section 1.2 analyses the historical context of British labour law. Section 1.3 analyses how UK law relating to the internal affairs of trade unions has evolved. Section 1.4 examines how, between 1979 and 1997, successive Conservative governments perceived trade union government and how they believed it could be altered via legal regulation. Section 1.5 critically examines the existing research that has been undertaken into the impact of Conservative legislation on the internal affairs of trade unions. Finally, section 1.6 justifies the thesis by detailing how it will address the gaps in current knowledge. Previews of the content of later chapters are also located in this section.

1.2 Trade Unions and the Law

In order to appreciate the development and nature of Conservative trade union legislation in the 1980s and 1990s, it is necessary to have a basic understanding of the historical character of British Labour law (Wedderburn 1991: 201). The British industrial relations system has traditionally been characterised by minimal legal regulation and, as far as possible, the minimal involvement of the state. As such, the system was labelled voluntarist or abstentionist (Flanders and Clegg 1954: 44;

Flanders 1970: 288; Lewis and Simpson 1981: 8; Clegg 1983: 290). As Otto Kahn-Freund wrote in 1954:

> There is, perhaps, no major country in the world in which the law has played a less significant role in the shaping of industrial relations than in Great Britain and in which today the law and the legal profession have less to do with labour relations (quoted in Flanders and Clegg 1954: 44.

However, whilst abstentionism meant that the state refrained from legislating in the arena of industrial relations it did not equate to complete withdrawal of the law (Taylor 1993: 7-8). First, the state intervened to ensure basic standards of health and safety in the workplace (Clegg 1979: 291). Second, there was state involvement in the establishment of statutory immunities to protect trade unions from the hostility of the common law (Wedderburn 1986: 20). The Trade Disputes Act 1906 gave trade unions a blanket immunity by prohibiting legal actions in tort against them, and for persons acting 'in contemplation or furtherance of a trade dispute', it provided immunities from liability for the torts of simple conspiracy, inducing a breach of employment contract and interference, as well as apparently confirming their right to picket peacefully (Wedderburn 1991: 203).

Aside from such limited intervention, governments actively refrained from legislating to affect the workplace. Regulation of the workplace was instead left to trade unions and employers, to develop their own norms and their own sanctions (Humphreys 1999: 5; Davies and Freedland 1993: 3). Kahn-Freund characterised the limited role of the law as collective laissez-faire, observing that 'it is in connection with trade disputes that the retreat of the law from the scene of industrial relations can be most clearly seen' (Kahn-Freund 1959: 44). However, this voluntarist system began to be questioned in the late 1950s and throughout the 1960s, for several overlapping reasons (England and Weekes 1985: 417). The main factors were the slow growth of the economy, the rate of inflation, the level of unemployment, a growing perception that the narrow concerns of traditional collective bargaining were failing to meet urgent social and economic problems, and a belief that trade union power was a significant contribution to the country's economic difficulties, which had to be confronted (Kahn-Freund 1977: chapter 1; England and Weekes 1985: 417-421; Marsh 1993: 5; Clegg 1983: chapter 8; Davies and Freedland 1993: 240). The problems facing the country resulted in greater government intervention of the

economy, in particular a search for a viable incomes policy. Central to this strategy was corporatism, which involved close cooperation with trade unions, the TUC and employers' associations (McCarthy 1985: 439). A recognition that traditional collective bargaining was failing to provide minimum standards for employees led to the introduction of a series of legislative acts designed to advance workers' rights. These included: the Contracts of Employment Act 1963, which required minimum notice periods for employees; the Redundancy Payments Act 1967, which entitled workers to minimum redundancy payments; the Industrial Relations Act 1971, which introduced the right for employees not to be unfairly dismissed; the Employment Protection Act 1975 and the Employment Protection (Consolidation) Act 1978 which extended the statutory rights of workers and the Health and Safety at Work Act 1974 which provided general duties on employers and employees in the workplace in an attempt to improve safety. Finally there was a raft of anti- discrimination measures, introduced by the Equal Pay Act 1970, the Sex Discrimination Act 1975 and the Race Relations Act 1976 (Marsh 1993: 5).

However, in respect to trade union power and the legal regulation of trade unions the only attempt to curb trade union activities during the period 1960-1970 came from the judiciary, not Parliament. In Rookes v Barnard [1964] AC 1129, it was held that the threat of industrial action in breach of employment contracts constituted a breach of the tort of intimidation (a civil wrong). In response to this, the Labour government elected in1964 introduced the Trade Disputes Act 1965, which resurrected trade union immunity. However, at the same time, and due to the Labour government's continued concern about the power of trade unions, a Royal Commission was established under Lord Donovan to examine the role of collective labour law. It was expected that the problems of British industrial relations would be laid at the door of the trade unions (Clegg 1983: 315-316; England 1985: 420). However, in its report the Donovan Commission gave strong support to the voluntarist tradition and rejected arguments in favour of increased trade union regulation. The autonomy and fragmentation of informal workplace bargaining, together with ineffective employer personnel policies, was blamed for industrial relations' problems (Clegg 1983: 316; England and Weekes 1985: 420; Marsh 1993: 6).

In spite of the Donovan Commission's conclusions, the Labour government felt it necessary to break with the past and to intervene in the domain of collective labour law, publishing a White Paper In Place of Strife in January 1969. This proposed compulsory conciliation under which unconstitutional strikers might be legally ordered to return to work, a compulsory strike ballot and a statutory recognition procedure for inter-union demarcation disputes (paras. 78-9, 93-96). The proposals met fierce opposition from the TUC and were subsequently withdrawn (Crouch 1977: 161-2).

The freedom from state interference in the activities of trade unions remained until 1971, when the Industrial Relations Act 1971 was introduced by the then Conservative government (Moran 1977: 56; Strinati 1982: 144). The Industrial Relations Act 1971 reflected traditional concerns of a section of the Conservative Party about the power of trade unions and about how the law could be used to resolve industrial relations' problems. In 1958 the Inns of Court Conservative and Unionist Society (ICCUS) published *A Giant's Strength*, which criticised trade unions as too powerful and sought legal protection against them, for individuals and for society (Clegg 1983). The ICCU proposed that any strike could be unilaterally referred, by either of the parties, to an independent tribunal. The tribunal's decision would be binding; trade union immunities would be removed from action called in breach of the procedure or report of the tribunal. Furthermore, unions should be registered and the immunities would protect registered unions only. Unofficial strikes were also targeted, with the proposal that they should be subject to criminal and civil proceedings (Weekes *et al.* 1975: 5 Kahn-Freund 1974: 186; Marsh 1993: 11). The ICCU proposal did not dictate the content of the Industrial Relations Act 1971; however, it did signpost the way ahead. On this point Moran comments:

> The pamphlet did not shape the final Act (the Industrial Relations Act 1971); rather it reflected Conservative concerns – over strikes, the closed shop and the constitutional position of unions which were also found in the 1971 legislation. Nevertheless, the pamphlet was a good indicator of one important strand of Conservative thinking (Moran 1977: 56).

The Industrial Relations Act 1971 attempted to demolish the previous labour law structures set out in earlier legislation and to erect a new code of industrial relations. Specifically, it sought to establish a new framework of law in relation to industrial disputes involving the creation of 'unfair industrial practices' and a new court, the

National Industrial Relations Court (NIRC). The Act also laid down emergency procedures in the event of major industrial action (O'Regan 1991: 45).

The Act required unions to register with the Chief Registrar of Trade Unions and Employers' Associations and to revise their rules relating to the calling of industrial action if they were to maintain fiscal benefits. Trade unions that wished to register had to have their rules inspected and approved by the Registrar. In return for compliance with the legislation, registered unions were granted bargaining, recognition and disclosure rights over unregistered unions. The unions were hostile because they objected to the state instructing them how to run their own affairs. Indeed, trade union opposition to the Act was longer than had been expected:

> Even when the de-registration policy of the unions was announced, it was generally expected that eventually the majority of trade unionists would recognise that the Act contained advantages for 'responsible' trade unionism or that the disadvantages of not being registered would lead unions to accept the need to register. Perhaps the greatest presumption of all was that respect for the law and a belief in the 'rule of law' would override other considerations if the interests of any party to a dispute appeared to be threatened by the intervention of the courts (Weekes *et .al.* 1975: 6).

As a result of the TUC policy of opposition to the Act, the refusal of most trade unions to register, and of employer reluctance to use the legislation, the Act failed to have any significant impact on the operation of trade unions (Weekes *et al.* 1975: 69).

The repeal of the 1971 Act and the introduction of the Trade Union Labour Relations Act 1974 (TULRA) by the incoming Labour government restored the previous abstentionist position, so that, according to Lord Scarman: 'The law is back to what Parliament intended when it enacted the Act of 1906, but in clearer and stronger terms than before' NWL v Woods [1975] IRLR 234. In fact, the Employment Relations Act 1975 and TULRA 1974, as amended in 1976, strengthened the rights of trade unions and union representatives in the workplace. These measures included the encouragement of trade union recognition and the establishment of the closed shop, the right to disclosure of information necessary for effective collective bargaining, and the right of union representatives to advance consultation and information and to take time off for trade union or public duties. On these developments England and Weekes (1985: 419) remarked:

> That these provisions should be enacted after so long an outcry that something must be done to curb union power is a dramatic illustration of the political power of trade unions.

However, the power of trade unions in industrial relations resurfaced as a central feature of the 1979 election campaign, with the Conservative Party manifesto stating that control of the trade unions was a priority:

> ... between 1974 and 1976 Labour enacted a militants' charter of trade union legislation. It tilted the balance of power in bargaining throughout industry away from responsible management and towards unions, and sometimes towards unofficial groups acting in defiance of their official union leadership (Conservative Party manifesto, 1979, cited in Lewis and Simpson, 1981: 1).

Between 1979 and 1993 a succession of Conservative governments introduced six Acts of Parliament, which contained legislative provisions regulating trade unions. These were the Employment Act 1980, Employment Act 1982, Trade Union Act 1984, Employment Act 1988, Employment Act 1990 and the Trade Union Reform and Employment Rights Act 1993. However, a significant proportion of the legislation related to the regulation of the internal affairs of trade unions, rather than intervening in the regulation of collective labour relations between employers and trade unions. It is the Conservative attempts to regulate the internal practices, procedures and behaviour of trade unions through the mechanism of the law which come under scrutiny in this thesis. In order to place the issue in context, the following section provides a critical examination of how the law relating to trade union internal affairs has developed.

1.3 A Critique of Trade Union Internal Affairs and the Law

Traditionally, union constitutions have varied greatly, since they have developed according to the history and traditions of the union in question (Webb, S. and Webb, B. 1920a and 1920b). The diversity of internal constitutional arrangements was also facilitated by the fact that the constitutions of unions were not prescribed or constrained by an external organization or by the law (Pelling 1971: chapter 3; Barrow 2002: 23). Internal trade union affairs were virtually inviolate (Maguire 1999: 3). The explanation for this has been given succinctly by Phelps Brown (1986: 284), who notes:

> Their early start gave British trade unions independence and respectability. There was no question of their being formed and controlled by an external organisation....They became accustomed to operating informally, as clubs, outside the purview of the law and they were jealous of their independence ... By the time the Royal Commission of 1867 came to consider

> the proper status of trade unions, and Parliament to regulate it, the experience of informal working was so well established that by almost universal consent there was no need to bring trade unions within the process of the law, even to the extent of assimilating their position to that of friendly societies.

In 1871 there was a proposal to bring trade union constitutions within the scope of legal regulation. In order to counter this proposal, the then Home Secretary introduced the Trade Union Bill 1871 and quoted the Minority Report of the Royal Commission on Trade Unions 1867-9:

> The extreme jealousy on the part of their members of State interference, would, we are convinced, render the attempt to pass such a measure impracticable...Trade unions are essentially clubs...the objects at which they aim, the rights which they claim, and the liabilities which they incur are for the most part, such as ... the law should neither enforce, nor modify, nor annul. They should rest entirely on consent (Parliamentary Debates 1871, vol 204. columns 266-7: 245).

Thus Parliament took an abstentionist approach to dealing with trade union internal affairs (Flanders 1970: 288). Trade unions were to be free to determine their own rules, free of state interference. The rule-book was allowed to prescribe the provisions dealing with the government of the union, the financial administration of the union, rules of membership and the rules relating to expulsion and discipline, free of legal interference (Maguire 1999: 3).

1.3.1 The Courts and Trade Union Internal Affairs

The first significant deviation from this approach came from the courts rather than Parliament. As trade unions grew, the courts felt the need to assert greater control over them because of the power they perceived that unions could wield, both over their members and over society (Honeyball and Bowers 2002: 354). The courts began to develop restrictions on the internal affairs of trade unions, in the form of interpreting the rule-book, and through their powers to imply meaning and strike out particular terms. In the case of Braithwaite [1922] 2 AC 440 the court recognised the contract basis of jurisdiction in respect to the rule-book. The member's contractual right was sufficient to justify both the court's intervention and the issuing of an injunction to restrain the union from acting in a particular way. From this point on the courts became increasingly willing to interfere in the internal government of a trade union, see for example Lee v Showmen's Guild of Great Britain [1952] 2 QB 329 and Bonsor v Musicians' Union [1956 AC 104]. Contractually, claims brought by members against their unions fall into one of two categories. First, claims on an

individual level that the union had taken disciplinary action in breach of the rule-book, either because the member has not committed the offence as claimed or because the union has failed to follow the procedure for dealing with the member's offences. Second, on a collective level, claims to ensure that the union has acted in accordance with the constitution, that instructions given to members and actions taken by union officials, such as applying funds, were in accordance with the rules.

However, the courts' supervision of the internal affairs of trade unions was constrained in specific circumstances. First, if a union rule gave the union discretion as to its application, the courts could not challenge a valid exercise of that discretion. Second, a claimant (union member) must have exhausted all the internal disciplinary procedures before applying to the courts, White v Kuzych [1951] AC 585 (Bowers 2000: 441).

A third restriction on the jurisdiction of the courts concerns the precedent set by the Foss v Harbottle [1843] 2 Hare 461 ruling. This is principally a rule of company law which has been applied to trade unions and which has two strands to it, although they are closely connected (Perrins 1985: 95). The first provides that where a wrong is done to the union, the proper claimant is the union itself, and not one of the members. In respect of a trade union it means that an individual member cannot take an action where an alleged wrong is done to the union by an officer of the union or an outsider. The proper claimant is the union itself, as represented by the majority of the membership, who may initiate action through the usual decision-making process. The second part of the rule is that a court will not interfere in the internal affairs of the union if the wrong complained of could later be ratified by the union's own internal procedure. The irregularity would constitute a breach of the union's rule-book, which could be approved by a resolution of the majority of members. There are long-established exceptions to this rule. It does not apply when a union acts ultra vires or where an individual member's rights have been infringed.

The way in which the statutory rights introduced by successive Conservative administrations since 1979 sought to empower the individual member by granting them new rights which they could enforce against trade unions in new ways is

analysed in chapters 6 and 7. Finally, at common law the courts had no jurisdiction when a person was refused membership in accordance with union rules (Cheall v Association of Professional, Executive, Clerical and Computer Staff [1983] 1 ALLER 1130). A critical examination of the evolution of this position in response to the legislation introduced by successive Conservative administrations is undertaken in chapters 6 and 7.

1.3.2 Statutory Regulation of Trade Union Internal Affairs

The Trade Union Act 1871 specifically endorsed the principle that unions were autonomous associations which should be free to determine their own constitutions. The Act retained the status of trade unions as voluntary organisations, rather than corporate bodies, but endowed them with the legal capacity to make contracts, own property, sue and be sued. The Act also provided for the voluntary registration of trade unions with the Registrar of Friendly Societies, and for the property of registered unions to be vested in trustees. The TUA 1913 introduced special political fund rules for any union that wanted to spend money on political activities. Under the TUA 1913 a resolution to adopt political fund rules had to be endorsed by a simple majority in a ballot of the members, held under rules provided by the Chief Registrar of Friendly Societies. Several statutes dealt with union mergers, each designed to make the process simpler than it was before, (see for example the Trade Union (Amalgamation) Act 1917, The Societies (Miscellaneous Provisions) Act 1940 and The Trade Union (Amalgamations) Act 1964 (TU(A)A). Apart from these limited areas, the law kept away from regulating the conduct of trade union business (Clegg 1983: 293).

However, the abstention of the law from the regulation of the internal affairs of trade unions was on borrowed time. In 1966 there was a proposal by the Conservative Political Centre for legally prescribed electoral procedures (Trade Unions for Tomorrow, CPC 1966), and the abstentionist approach was finally changed with the inception of the Industrial Relations Act 1971.

In addition to tackling the area of collective industrial relations the then Conservative government had a second strand to their legal bow. In a key departure from the

abstentionist tradition, the 1971 Act subjected the internal affairs of trade unions to regulation. Davies and Freedland (1979: 6) commented:

> For the first time [in 1971] Parliament displayed a detailed interest in the internal affairs of trade unions (beyond the concern for the political fund) by the enactment of 'guiding principles' for all trade unions'.

This Act subjected trade union rule-books to scrutiny and specified guiding principles, which included that no one should be 'arbitrarily' or 'unreasonably' excluded or subjected to any 'unfair or unreasonable' disciplinary action. An individual could complain to an industrial tribunal or to the NIRC that a union had acted unreasonably or arbitrarily. In fact the individual members' rights were not widely used (see Weekes *et al.* 1975: 69). The attempt by the Conservatives under the 1971 IRA to constrain unions and create a new framework of collective labour law was generally seen to have been a failure. It was suggested that the possibility for effective law in this area was highly limited (Weekes *et al* 1975: 69).

The repeal of the 1971 Act and the Introduction of the Trade Union Labour Relations Act 1974 by the incoming Labour government restored the previous abstentionist position (see section 1.2 above). However, the internal affairs of trade unions re-emerged as a key issue for the Conservative government elected in 1979, under the leadership of Margaret Thatcher. So, like that led by Edward Heath in 1971, the new Conservative government sought to introduce a scheme of restrictive legislation. Some of the foundations of the post-1979 Conservative legislation could be located in the Industrial Relations Act 1971. For example, this Act laid particular emphasis on protecting individuals in the event of industrial action. Section 65(7) prohibited a union from disciplining any member who refused to take part in industrial action (Elgar 1997: 48). The legal measures introduced by the Conservative Government were also influenced by the American Landum-Griffin Act 1959 for free and democratic union elections.

However, whilst some of the foundations of the Conservative legislation could be traced back both to the Industrial Relations Act 1971, and earlier proposed legislation and law from the USA, the legislation of the 1980s and 1990s was distinctive in its approach to the regulation of internal trade union affairs. The Conservative approach prescribed detailed rules for the conduct of union administration. The parameters and

methods of intervention into the internal affairs of trade unions were far more wide-ranging and extensive than under the Industrial Relations Act 1971. This involved statutory intervention in the rules of trade unions, widening the scope of the courts to review trade union rules, providing union members with statutory rights of membership, and encouraging individual members to complain about a breach of union rule or statute. The strategy adopted this time by the Conservatives was to control trade unions by creating a set of legal resources that were available for the use of any employer, employee or union member, who cared to make use of them. A detailed analysis of the influences behind Conservative policy is undertaken in chapter 2.

1.4 The Problem of Union Democracy

In section 1.3 it was identified that trade unions had traditionally been free to determine their own constitutional arrangements, free from legal interference. This resulted in British trade unions exhibiting a wide variety of structures and democratic processes (Hendy 1998: 17). During the 1980s and early 1990s the nature of union government came to the fore as the Conservatives claimed that trade unions needed to be more democratic. It was inferred that traditional approaches to trade union government were characterised by 'collective participatory decision-making' (Democracy in Trade Unions 1983). Collective decisions were made on key issues, such as the election of officials, industrial action, discipline and expulsion, and union policy, the members accepting and abiding by majority collective decision-making. The membership also participated through branches and other units of the union structure in the exercise of union objectives through collective action (Webb and Webb 1920: 3; Hirschman 1970: 171; Radice 1978: 166; Clegg 1979: 112; James 1984: 8; Flood 1988: 39 and Terry 1996: 39).

James (1984: 9) suggests that the collective nature of trade union government is characterised by power being distributed through the union, so that different levels or groups have some scope to make decisions and hence participate over certain issues. James (1984: 8) denotes this 'polyarchic union government' in which there are a number of collectivities within the union with a locus of power and decision-making, some party, some faction, some formal, some informal. Polyarchy represents a

'balance of power between leaders and active participants' (1984: 8). James (1984) argues that control over decision-making is distributed among a series of collectivities, usually of a hierarchical kind, so that lower- level collectivities possess some degree of autonomy of decision-making. The rank and file can shift its support from collectivity to collectivity, depending on the issue under debate. Voting, compliance and retention of membership are three ways in which the passive membership can register their legitimation of one or other of the competing collectivities (Flood 1988: 39).

'Collective participatory democracy' is claimed to have spawned decentralisation of union government, strong shop-floor organisation and autonomous branches. Terry (1996: 88) argued that this form of union government became:

> increasingly celebrated in the 1960s and 1970s as the keystone of British union democracy, as the necessary antidote to the development of oligarchy within unions. Participatory democracy produced organised, decentralised opposition collectivities within some trade unions, which sought through the unions' institutions and processes to influence right-wing union leaders. The electoral victories of left-wing candidates for office in the second half of the 1960s led in turn to greater authority for shop-stewards and other local lay activists.

A wide variety of methods of membership involvement is inherent in the term 'collective participatory democracy', which can extend from merely attending meetings, to sitting on a workplace committee, voting at a branch annual general meeting or participating in the annual union conference. If participation is regarded as the cornerstone of democracy it should not be restricted to formal direct participation in the organs of government; participation may fall outside these formal institutions and may be of an informal nature. An over-emphasis on direct modes of participation ignores the dynamics of social reality. A low level of participation in geographically based branch affairs may be offset by the existence of significant workplace association. Moreover, rates of participation may ebb and flow over time, depending on the union's internal and external environment (e.g. in situations where union rights are threatened, or changes proposed to the bargaining agenda) and factors internal to the association (e.g. rules revision changing the benefit entitlement of members) (Flood 1988: 82).

The traditional 'collective participatory' nature of union government is reflected in differing definitions of union democracy:

Democracy exists where power rests with the members in general meeting. When power was delegated it was for short periods of time only, and officers were rotated to prevent imposition, that is to prevent anyone group consolidating its power (Webb and Webb 1920: 3).

Trade unions are not autocracies and are democratic because members have available a number of channels, varying from union to union, through which they can exert influence over their leaders. Factions within unions, the effect of the separation and decentralisation of power, and the influence of full-time officials in close contact with members act as checks on leaders (Clegg 1979: 112).

> Democracy exists in trade unions when institutions and processes operate to prevent arbitrary use of power and ensure membership involvement in trade union decision making, so that while trade union leaders provide effective leadership, they remain responsive to their members (Radice 1978: 166).
>
> Democracy refers to the chance to participate in the conduct of the relationship, whether by voting, complaining, sharing in decision making or lobbying (Hirschman 1970: 171).

'Collective participatory democracy' has activism and participation at its heart, with the emphasis placed on the processes rather than the institutions of democracy. In particular, membership meetings are seen as an important means of giving members the opportunity to influence the union's decision-making (Klandermans, 1984: 189). However, whilst the rhetoric of those who advocate 'collective participatory decision-making' stresses that membership participation should be high, the reality, as evidenced by empirical studies, is quite different. A major weakness of 'collective participative decision-making' is the emphasis placed on direct and close contact of the membership with the union, via the branch, which is seen as the focus of the structure. The crucial problem is that research has established that very few members do participate and that branch meetings are frequently sparsely attended. A very large number of studies document the poor attendances and low participation rates which commonly characterise branch meetings (Goldstein 1952; Roberts 1962; Goldthorpe 1969). As Goldstein (1952: 269) noted:

> Branch meetings attracted a handful of members who dominated branch life. Union civil servants were in a position to and often did usurp the policy determining functions assigned in theory to elected representatives. The branch was an oligarchy parading in democracy's trappings.

Based on the analysis of branch voting figures, studies such as Goldstein's suggested high levels of member participation on a few contentious issues, but low levels of participation in relation to issues such as the election of officials at the national and local levels. Less than 8 per cent of members voted in the election for the general secretary of the Amalgamated Engineering Union in 1957 and 1964. Similarly low-turnouts were registered in USDAW in 1980 and in the TGWU in 1982. All of these

unions stressed the importance of the branch as focus of democracy within the union structure.

Such evidence leaves trade unions vulnerable to attack, on the basis that they are undemocratic organisations which seek to articulate the aims and objectives of a vociferous minority while ignoring the true preference of the majority of their members. Membership involvement viewed in this way thus becomes a test of internal democracy. Ever since Roberto Michels's *Political Parties* first appeared, in 1915, there has been concern about the extent to which trade unions could be characterised as democratic. Michels's study of trade unions prompted him to declare that they are subject to an 'iron law of oligarchy':

> It is organisation which gives birth to the dominion of the elected over the electors, of the mandataries over the mandators, of the delegates over the delegators. Who says organisation says oligarchy. Rank and file members had little or no say in policy making in trade unions, policy was made by and for the benefit of a small group of permanent officials and leaders (Michels 1962: 16).

1.4.1 The Conservative Interpretation

Low levels of turn-out at branch meetings and in elections were used as one justification for legal intervention in trade union affairs by Conservative governments between 1979 and 1997. The Conservative perspective was that 'collective participatory decision-making' enabled militant union leaders and activists to control union constitutions. Trade union business was considered to be dominated by the majority groups by virtue of their greater knowledge of union practices, procedures and rule-books. Participants of meetings were thought to be intimidated into accepting the position of the most radical. In other words, participatory democracy centred on the meeting was generally thought to favour those who were the most vocal, articulate and/or powerful. The Conservatives desired more moderate trade unions and believed this could be achieved by reducing the power of left-wing militant leaders, who were, in their view, dominating the membership of trade unions and deciding policy irrespective of member's' wishes.

> A low level of participation is an unsatisfactory feature of union life because it risks placing power in the hands of unrepresentative leaders (Democracy in Trade Unions 1983, para 1: 1).

> The purpose of legislation since 1979 has been to shift power to members of trade unions. Trade union members must have protection from abuses of power by their unions (Norman Fowler, Hansard, Parliamentary Debates, 818, 1987: 645).

> Trade unions need to be more accountable and responsive to the wishes of their members (Trade Unions and Their Members 1987, para 1.2: 1).

The Conservatives were convinced that, through the introduction of greater individual membership participation, the existing and, in their view, generally undemocratic collective decision-making processes of trade unions could be undermined. The following quotes illustrate the view that the Conservatives held about collective trade union decision-making:

> If trade unions are to serve and fairly represent the interests of their members they should ensure that any important decisions are supported by a majority of members voting in a secret ballot. The methods trade unions use to consult their members are often totally inadequate. Few things have done more to lower public regard for trade unions than the spectacle of strike decisions being taken by a show of hands at stage-managed mass meetings to which outsiders may be admitted and where dissenters may be intimidated (Democracy in Trade Unions 1983, para. 56: 17).
>
> Decisions which it is claimed are reached on behalf of the members and in their interests can in practice be contrary to the wishes of those concerned. Time and again union leaders are seen to be neither representative of the majority of their members nor directly responsible to them (Democracy in Trade Unions 1983, para. 7: 3).

The abstention of state regulation from this domain had, in the view of Conservatives, left trade unions free to develop undemocratic systems of government. They believed that the existing common law and statute law did not prevent trade union activists from controlling the constitutions of trade unions. The law was viewed as a device to produce specific changes to the internal affairs of trade unions.

> It is evident trade unions have made few or painfully slow attempts to reform their internal affairs. The Government believes that the time has come for legislation to assist the process forward. Without legislation it is clear that the impetus to reform will continue to be lacking (Democracy in Trade Unions 1983, para. 13: 4).
>
> The government's prime aim in proposing legislation is to encourage trade unions of their own accord to reform their electoral arrangements so as to become, and be seen to become, more democratic and more truly representative of their members' interests (Democracy in Trade Unions, 1983, para. 54: 15-16).
>
> Trade union reform is needed to ensure that the leadership is more representative of the members. It is clear that few trade unions have taken the initiative in bringing about democratic reform, and the Government has reluctantly come to the conclusion that some legislative intervention is necessary (Democracy in Trade Unions 1983, para. 55: 17).
>
> The purpose of the legislation that we have introduced since 1979 has been to shift power to members of trade unions (Norman Fowler, Secretary of State for Employment, House of Commons, Official Report, Parliamentary Debates, Hansard, column 818, 1987: 423).

The law relating to trade unions was therefore the subject of extensive changes over nearly two decades, with the introduction of six statutes by successive Conservative governments. The Conservatives sought to impose a particular form of government

on trade unions. This placed considerable emphasis on securing participation of the membership through secret ballots as a mechanism for demonstrating approval of leadership actions. The Conservatives were convinced that through secret ballots a mechanism for obtaining greater accountability of union leaders had been found. It was believed that the individual member would act more conservatively, given the freedom to do so, voting for the moderate candidate in elections, voicing a resounding 'No' to political funds and acting as a moderating influence in respect to calls to take industrial action (Undy and Martin 1984: 114). The individual member would advance their self-interests, fulfil their employment contracts and go against collective action (Maguire 1999: 7). It was believed that the legislation would be used by union members to curb the industrial muscle of their trade unions, leaving unions in a weak economic and political position.

The Conservative legislative programme was justified in terms of democracy 'as giving trade unions back to their members', the belief apparently being that 'rank and file' members would be less radical than union leaders (Auerbach 1993: 42). The legislation was aimed at the target of individualising union activity through the regulation of decision-making, prioritising secret ballots and seeking to depoliticise trade unionism (Fosh *et al.* 1993: 28; Marsh 1992: 115; Davies and Freedland 1993: 438). Deakin and Morris (1998: 820) and Humphreys (1999: 8) suggest that the legislation had as its cornerstone the notion that unions should be democratic and exist for the benefit of their members. However, a less noble motive for the introduction of the Conservative reforms post 1979 is also detectable, that of inflicting lasting damage on trade unions which would contribute to the electoral defeat of the other 'wing' of the labour movement the labour party (Fatchett 1987; Grant 1987; Minkin 1992; Leopold 1997. The intrusion of the law into the internal affairs of trade unions was regarded as constituting a most serious challenge to the historical unity and strength of the Labour movement (Hain 1984: 12). The introduction of political fund ballots were designed to sever the links between the Labour Party and the trade union movement thereby destroying the very foundations of the latter's political influence. It would be difficult for the unions to participate in economic strategy without the political legitimacy of the Labour Party behind them. Their permanent

political link would be broken and their political influence reduced (Grant 1987: 59). The Conservative programme of reform consisted of three strands.

Firstly, the Conservatives sought to influence the internal political nature of trade unions through the use of membership ballots for the elections of union officials and union political funds. It was believed that increased individual membership participation would result in the election of more moderate trade union leaders and the pursuance of a more responsible political agenda. Secondly, the Conservatives, through the use of industrial action ballots, sought to curb the external threat trade unions posed to the economy and society by engaging in industrial action. Giving an increased voice and participation to the average moderate member would help protect employers and the national economy from the damaging consequences of strike action. Finally, the Conservatives sought to influence union behaviour by giving individual trade union members specific rights, which they could enforce against their trade union through complaint to external agencies. The Conservative view was that the empowerment of trade union members via the law could be used as a weapon against trade unions, in order to destabilise the cohesive relationship between trade unions and their members and to impede effective trade union activity (Fredman 1992: 25). It was believed that dissident members or those working through them could use the law to disrupt trade union power, trade union decision-making and the trade union cohesion which is essential for union effectiveness (Moher 1995: 35). The 1979-97 period of Conservative government resulted in unprecedented restriction by the state on the freedom of trade unions to determine the running of their internal affairs. It has been remarked that:

> The law governing the relationship between trade unions and their members was reformed over a fifteen-year period from a relatively non-interventionist approach to one which is highly restrictive, limiting unions' scope for autonomous action (Deakin and Morris 1998: 225).

The election of two successive Labour governments since1997 has not produced an administration with a radically different policy toward the internal affairs of trade unions. In this respect, Towers (2003: 2) has observed that, 'in most aspects the Blair government maintained legislative and policy continuity with its Conservative predecessors'. The Labour party has made it abundantly clear that the tenets of the Conservative reforms of internal trade union government will remain in place. The

philosophy was underlined by Prime Minister Tony Blair when he spoke to the TUC conference in September 1997:

> Trade Unionists must shed-old fashioned attitudes, modernise their political structures and accept new responsibilities (The Times, September 1997).

1.5 A Critical Review of Existing Research in to the Impact of Conservative Legislation on the Internal Affairs of Trade Unions

There is an abundance of published literature which has attempted to assess the impact of Conservative legislation on the internal affairs of trade unions (for the most renowned see: Elias and Ewing 1985; Steele 1990; Brown and Wadhwani 1990; Elgar and Simpson 1993; Miller and Steele 1993; Dunn and Metcalf 1996; Undy *et al.* 1996; Brown, Deakin and Ryan 1997). At appropriate junctures throughout the thesis comment and reference will be made to these works, particularly where the current research confirms or refutes their findings. The remainder of this section critically examines this earlier work.

In 1987 Elias and Ewing published *Trade Union Democracy, Members' Rights and the Law*. The strength of the work is the clarity with which it describes and analyses the impact of the Conservative legislation where this regulates the relationship between trade unions and their members. However, the analysis is rather uneven, with some issues covered in considerably more depth than others. The work provides a detailed analysis of the contractual basis of the union-member relationship and of how the judiciary can control the terms of the contract, together with the related topic of how the courts have responded to members' challenges to executive decisions. Elias and Ewing (1987) also consider the impact of the new legislation on trade union government. Although this contains some interesting thoughts and observations, it does not set out a clear vision of precisely what the role of the law should be.

Whilst Elias and Ewing briefly acknowledge the existence of widely differing views on how to define or measure trade union democracy (p. 268 and p. 274) and concede that the law may have only a limited role to play in promoting member control, they do not consider whether the direct legal regulation of union government, introduced in the 1980s, was likely to enhance the degree of protection for and influence of union members at the expense of union bureaucracies – an issue that is central to this

research. Elias and Ewing (1987) did however conclude that some form of regulation was desirable and argued for it to be implemented through a form of self-regulation, supervised by a specialist labour court, insulated against the malign influence of the judiciary.

Steele (1990) analysed changes to the rule-books of trade unions. In particular, the research was concerned with the pressures which led to significant changes being made to union rules, and consequently, to the structure and organisation of trade unions (Steele 1990: 52-3). The research was not concerned with every detailed amendment to the rules. Instead, it focused on those amendments which had significant consequences for areas of union internal affairs. These included admission and expulsion, appointment of officers, democratic procedures, structure, organisation, finance, benefits, political funds, the calling of industrial action, union objectives and rule revision procedures.

Steele's research led to three key findings. First, a significant level of rule-change activity was recorded in the period 1983-7, with the law isolated as the main cause. Second, the impact of legislation regulating the internal affairs of trade unions was most clearly recognisable in respect of the election of senior officials, as trade unions altered their electoral processes to comply with Conservative legislation. Finally, the work also referred to changes in the areas of union structure and internal discipline, but regrettably made no further comment on this, stating, 'structural changes and pressures were difficult to chart without in-depth study' (Steele 1990: 69).

Brown and Wadhwani (1990) considered the significance of the Conservative legislation designed to control the level of strike activity. This involved the analysis of Conservative labour law policy, including the restriction in the operation of the immunities, the re-definition of a trade dispute, the limitation on secondary action and picketing and the introduction of pre-strike ballot requirements. Brown and Wadhwani (1990: 62) observed that the threat of sequestration of a union's assets was a major deterrent and that the law had made trade unions more careful about calling for industrial action. They argued that the strike had become a more considered tactic and that the impulsive use of picketing and secondary action had been restrained.

This might be deemed to be a product of the moderate trade union member. Alternatively it could simply be a reaction to the fact that trade unions found themselves operating in a more hostile commercial and economic environment. This thesis makes a judgement on this issue. Brown and Wadhwani (1990: 62) also observed some unexpected consequences of the balloting legislation from the Conservative perspective. Strike votes in favour of industrial action improved the position of trade unions, encouraging management to settle disputes on more favourable terms to the union (1990: 62). Overall, Brown and Wadhwani (1990) indicate that the impact of the law on strikes was limited; other factors, such as unemployment, increased market competition and management policies, were all paramount in weakening trade unions.

Elgar and Simpson (1993), in an attempt to determine the impact of industrial action ballots, interviewed 846 union representatives and a cross-section of employers. Their findings made them sceptical about the importance of the law, indicating that ballots alone were not seen by either trade union officials or employers as being responsible for bringing about major changes in workplace relations. However, they observed that trade unions had adapted to the requirement to hold industrial action ballots and had been able to use them to strengthen their negotiating positions. Further, and most interestingly in respect to union democracy, and in contrast to the research of Undy *et al.* (1996) (see below), they did not find that the balloting process caused uniform centralisation of union government. The research also reported that the balance of advantage brought about by the introduction of industrial action balloting legislation was generally seen, by both trade unions and employers, to be with the trade unions. Elgar and Simpson subsequently cast doubt on whether this position had endured following the introduction of the TURERA 1993, which required trade unions to use postal ballots rather than workplace ballots and tightened up the regulations surrounding the balloting process. Elgar and Simpson (1996) report that as a result of this new legislation the trade union movement believed that the balance of advantage derived from the industrial action balloting laws shifted significantly towards employers.

Miller and Steele (1993) considered changes in employment law since 1979 and their impact on trade unions. In respect to union government they concluded that successive Acts had placed additional responsibilities upon trade unions, making internal administration a more complicated and onerous task. However, the provisions relating to strike ballots were regarded as the most complicated and burdensome issue. The detailed rules about the content of the voting form, the presumption in favour of separate workplace ballots and rules about specifying who is authorised to call the action were regarded as having a highly restrictive effect on trade unions. The provisions were clearly regarded by Miller and Steele (1993: 231) as increasing the likelihood for legal action by employers and members, who could have legal action declared illegal because of a technical breach of the balloting rules. However, it was claimed that the overriding impact of the legislation had been on trade union power and influence. There had been a major reduction in the scope of trade union immunities, unions had to comply with detailed balloting requirements before taking strike action, the method of election of their executives was dictated by statute and there was a challenge to the unions' traditional links with the Labour Party. Unions were frozen out of relations with Government and the corporatist traditions of the post-war era were ended (ibid: 232).

Dunn and Metcalf (1996) made an adventurous attempt to isolate the impact of the law from other factors that might be equally or more important in altering union behaviour and employee performance. An assessment of the impact of legal change is often problematic, since it can be difficult to know whether it is the law or other related changes that have produced an observed result. They suggest that the law has been a significant contributory factor in: falling trade union membership, the collapse of the closed shop, the near elimination of all kinds of secondary action and the alteration of trade union democratic processes. Dunn and Metcalf (1996: 93) concluded that the industrial relations system and its economic effects seemed to be going in the direction in which the Conservatives hoped the law would propel it. However, whilst they acknowledge the influence of the law, they make it clear that they think it is impossible to isolate the law's contribution from what is often referred to generically as the 'industrial relations climate'. This comprises factors which include government policy, economic circumstances, the decline in traditional

manufacturing, employer industrial relations strategy, worker apathy and membership disillusionment. To this end, Dunn and Metcalf (1996: 67) state:

> The implication is that the legislation has been peripheral. It began to leech on a trade union body already draining of strength in adverse market conditions and, as unions became increasingly enfeebled, it had the opportunity to take hold - irritating, parasitic, but not the main source of union discomfort.

Dunn and Metcalf concluded that 'whether the result of the legislation has been less militant trade unionism, as the voice of an assumed moderate majority shaped union policies and actions, is far from clear-cut' (ibid: 83).

The most comprehensive research to date into the impact of the legislation on internal trade union affairs was conducted by the Imperial College-ESRC survey (Undy *et al.* 1996). The research consisted of an analysis of the constitutional procedures and practices of 24 TUC affiliated unions and 6 in-depth case-studies that were used to illustrate the impact of the TUA 1984 and the EA 1988. The major findings were the following. The legislation was found to have left 'an indelible if uneven mark upon the structures of union government' (Undy *et al.* 1996: 194). The research found that after initial hesitation, almost all unions had by 1992 complied with the new statutory requirements by reforming their rules and/or practice (Undy *et al.* 1996: 163). However, the research also observed that some unions adapted their practices to conform to the legislative provisions, but without formally or immediately changing their rules (Ibid. 169). The research usefully categorised unions by reference to a continuum of the minimal, moderate and marked changes the law wrought in different unions (Ibid. 181). The study explained that even those unions which were categorized as making "marked" changes in election procedures in order to comply with the legislation demonstrated considerable continuity in policy (1996: 192). Undy and his colleagues went on to suggest that:

> In its early years at least, the legislation singularly failed to initiate a transformation in the political complexion of the union leadership or a reorientation of democracy in a 'moderate' direction (ibid. 380).

The Imperial College-ESRC study also makes some useful observations in connection with the development of union policy and the role of activists. It asserts that the legislation altered trade union policy-making processes by strengthening the influence of the centre and weakening intermediate bodies and local activists (Undy *et al.*

1996). The suggestion was that the major effect of the balloting provisions was to increase centralisation (Martin *et al.* 1991: 205). The nature of these developments in trade union organisation and decision-making was explored in the fieldwork for the current research and this casts doubt on the finding that trade union government automatically became more centralised as a result of the introduction of the legislation. Significant variations were detected amongst trade unions in this respect. Further, Undy *et al.* (1996: 177) stated that 'the legislation disenfranchised particular groups and local committees'. However, the Undy *et al.* (1996) analysis then counters this by claiming that the legal changes were subsumed within a union's collectivist ethos and organisation. It says that opinion formers and activists found new roles in the administration and political processes of the union (1996: 193). There are however two major problems with the study carried out by Undy *et al.* First, it is not fully explained how opinion-formers and activists obtained new roles within specific unions. Second, the analysis is also limited because it focuses almost exclusively on the impact of the election and industrial action balloting provisions, ignoring other mechanisms of control, with the result that the full story regarding constitutional change resulting from Conservative legislation is not charted.

In 1997 Brown, Deakin and Ryan updated the Brown and Wadhwani (1990) research after more time had elapsed and further legislation had been introduced. Brown *et al.* (1997) drew broadly similar conclusions to that of the earlier research. As far as trade unions were concerned, Conservative legislation was considered to have had a damaging impact on union power, inhibiting trade union behaviour. However, it was asserted that the law alone was not responsible for this state of affairs, that the hostile economic conditions were important factors. The apparent success of the Conservative legislation could not be seen in isolation from the rise in unemployment and from changes to the structure of labour and product markets which occurred at this time. With regard to the internal affairs of trade unions (the central concern of this thesis) Brown, Deakin and Ryan (1997: 69) drew some important but limited observations. The research concluded that that whilst trade unions complied with the laws affecting their own governance this had an inconsistent impact on their policies; it did not, for example, promote the emergence of more 'moderate' leadership. It was observed that more formal processes such as postal ballots did not generally increase

turn-outs, or lead to more moderate outcomes. The research suggested that the legal requirements imposed on trade unions to maintain members' names and to publish financial details acted to stimulate improvements in the information, accounting and communication systems of union governance. Whilst the stated intention of the legislation was to make trade unions more accountable to their members the research suggests that it actually strengthened the national leadership of trade unions (Brown, Deakin and Ryan 1997: 69).

1.6 Justification for the Study and its Contribution to Existing Knowledge

Whilst the above studies reveal direct, specific and interesting outcomes of the legislation on union membership, the decline of the closed shop and union behaviour, they do not discuss extensively the impact of the law on internal union affairs. Thus, there is an incompleteness about the story so far, relating to the changes in the constitutional arrangements of trade unions as a result of the Conservative legislation. This is a central concern of this thesis, and its purpose is therefore to bridge this gap in our knowledge. In so doing, it explores several interrelated research issues in some depth. These concern:

- *The impact of Conservative balloting legislation pertaining to elections, political funds and industrial action on the political complexion of trade unions.*

- *The extent to which individual union members have used new legal rights against their trade unions.*

- *The identification of any changes to trade union government and decision-making practices, procedures and behaviour resulting from the introduction of Conservative legislation.*

In exploring these issues, this thesis is far more extensive in its assessment of the impact of the Conservative legislation on union internal affairs than are any of the afore-mentioned previous studies (see section 1.5 above). The study encompasses not just the balloting regulations pertaining to elections and industrial action, but also the impact of political-fund ballots and the extensive package of statutory rights handed to members, pertaining to the regulation of internal union affairs.

If the legal changes introduced by the Conservatives were effective, it would be reasonable to expect dramatic changes to have occurred to the constitutions of trade unions. The thesis critically examines the constitutional changes that have taken place within trade unions, together with the pressures which have brought about these changes. This will provide data pertaining to the research issues identified above. In order to complete this task it will be necessary to engage in an iterative, in-depth and historical analysis of the changes to constitutional arrangements that have taken place in a representative cross-section of the trade union movement.

The remainder of this thesis is divided into eight chapters. Chapter 2 analyses the development of Conservative thought behind the legislation designed to reform the nature of trade union government. Chapter 3 outlines the general methodological approach adopted by the study and gives details of the specific research methods employed. Chapter 4 examines the impact of the balloting provisions pertaining to elections of union officials and trade union political funds. Chapter 5 analyses the impact of industrial action ballots on the case-study unions. Chapter 6 analyses the impact of providing members with statutory rights of complaint to the High Court (with the assistance of the CROTUM), to the CO, or in some circumstances, to the Employment Tribunal. Chapter 7 discusses the research findings and brings together the main observations derived from the fieldwork. Chapter 8 draws conclusions on the impact of the Conservative legislation and the policy underlying it. The implications of the findings for unions, union democracy and government policy are developed, together with an explanation as to how the study has added to the existing literature.

Chapter 2 – Trade Union Government: The Development of Conservative Thought and Law

2.1 Introduction

This chapter critically analyses the development of the thought underpinning Conservative policy towards trade unions and, in particular towards the regulation of trade union internal affairs. The chapter also examines the formulation and content of the legal provisions designed to procure changes in the internal procedures, practices and behaviour of trade unions.

The Conservative Party came to power in 1979, holding the opinion that the industrial relations framework that existed gave trade unions excessive power and influence over individual union members, over employers, and over economic and commercial interests. It was believed that large militant unions could, through their collective strength, have an adverse impact on labour costs, introduce restrictive practices, impose inflexible pay arrangements and engage in costly strikes, disrupting economic performance. The Conservatives asserted that the events of the Winter of Discontent (1978/9) demonstrated that unions were too powerful, out of control and failing to act in the national interest.

> During the winter of 1978/9, the Labour government's Winter of Discontent, it became clear that the unions were far exceeding their proper role (Prior, Secretary of State for Employment, 1986: 155)

> Trade unions are powerful and unique institutions. They are not like sports clubs or social clubs, which concern themselves with the individual's leisure activities. Trade unions can influence the employment of their members and affect the viability of the workplace, and thus the entire future of the individual trade union member (Mr Norman Fowler, then Secretary of State for Employment, Hansard, Parliamentary Debates, volume 121, no. 36, columns 817-18, 3rd Nov. 1987: 345)

However, a significant proportion of the Conservatives' legislative onslaught against trade unions concentrated on regulating the internal affairs of trade unions, as opposed to restricting union activities in the labour market (Undy et al. 1996: 73). This chapter explains how the regulation of unions' internal affairs formed part of the Conservatives' strategy for controlling trade unions. The development of the philosophy behind the Conservative approach is a matter that has preoccupied labour lawyers and political and industrial commentators since 1979 (Auerbach 1990; Ewing

1988; Fredman 1992; Gamble 1994; Hendy 1993; Marsh 1992; Miller and Steele, 1993; Martin et al. 1995; and Wedderburn 1989, 1999). Two key perspectives can be discerned from the academic literature surrounding the Conservative approach to trade unions. They represent contrasting views on the influences that dictated the Conservative policy towards trade unions.

The first perspective asserts that the legislative programme was based on the philosophy of the New Right (Wedderburn 1989: 15, 1999: 199; Letwin 1992: 113; Richardson 1996: 221). Influenced by this ideology, the Conservatives sought to develop legislation that was aimed at undermining the collective organisation of workers and constraining trade union power. The second perspective contends that Conservative policy lacked any ideological focus and that it was merely a pragmatic reaction to specific events and circumstances in an attempt to tackle industrial relations problems (Fredman 1992: 24; Fosh et al. 1993: 22; and Auerbach 1993: 227). The following section critically evaluates the evidence and arguments for each of these two competing perspectives.

2.2 Grand Theory of the New Right vs. Pragmatic Industrial Relations

The Conservative government's approach to industrial relations was, according to Wedderburn (1989), framed by reference to the ideology of the New Right and particularly the writings of Hayek (1960). Hence he argues that:

> The philosophy of Hayek and its importance for the new labour law has gone too long unemphasised, especially by those of us whose first task is to analyse and explain the legislation. It does not explain everything but illuminates much ... labour legislation since 1979 can be better understood and its future course probably better predicted by reference to this framework set up by Hayek ... This mixture of market forces and strong government, displaying a determination to put down those who might disrupt the spontaneous order, is quintessentially Hayek (1989: 15).

Specific beliefs underlying the New Right thesis around which Conservative legislation had been built and policy framed can be identified. Hayek, at the vanguard of this New Right thinking, regarded trade unions as a coercive restraint upon the market place. It was posited that their collective strength must be ended if Britain was to rescue itself from economic decline (Hayek 1960). Moreover, Hayek asserted that:

> The acquisition of privilege has nowhere been as spectacular as in Britain, largely by reason of the Trade Disputes Act 1906. The whole basis of our free society is gravely threatened by the arrogated power of trade unions (1960: 144).

Subsequently he went on to assert:

> There can be no salvation for Britain until the special privileges granted to trade unions are revoked. The legalised powers of the unions have become the biggest obstacle to raising the living standards of the working class as a whole. It is this group, by its collective action and group pressure, which is noxious (Hayek 1984: 52).

The immediate removal of these special privileges was deemed necessary in order to deprive unions of their more serious coercive powers (Miller and Steele 1993: 226). Picketing in particular was singled out for criticism, because Hayek regarded it as a 'kind of organised pressure upon individuals, which in a free society no private agency should be permitted to exercise' (Hayek 1960: 274). Hayek also objected to secondary action and the closed shop. All forms of secondary action were criticised because they were regarded as methods of coercing workers to fall in line with union policies, and the closed shop because it was considered an infringement of individual liberty (Hayek 1960: 275).

Margaret Thatcher was known to admire and read Hayek's work and is said to have described it as 'supreme' (Ranelagh 1992: 9). An analysis of the industrial relations legislation introduced by the Conservatives during the 1980s and 1990s reveals much of it to be consistent with Hayekian philosophy. For example, legal provisions that narrowed what constitutes lawful industrial action clearly met with one of Hayek's major criticisms about British labour laws. Other writers, such as Hanson and Mather (1988), who also advocated the Hayek approach, have been glowing in their praise of the legislation introduced by Conservative governments.

> The step by step process of trade union reform initiated by the Thatcher Government has been in many ways its most important and successful programme of radical innovation (Hanson and Mather 1988: 73).

Hall (1988: 7-8) also stresses the importance of the New Right ideology as being integral to Conservative policy towards trade unions. Hall (1988: 8) suggests that there can be little question that measures to 'tame' the unions represented a key element of a hegemonic project pursued by successive Conservative governments. This manifested itself in ideological terms, as part of a philosophy of anti-collectivism, and along the economic dimension, in an attempt to free the labour market (Syrett 1977: 232). Richardson (1996: 221) suggests that the influence Hayek had on the policy of Conservative governments after 1979 was far from negligible.

Letwin (1992: 113) includes Hayek as one of the gurus of Thatcherism whose ideas and rhetoric helped shape the legislative onslaught against trade unions in the 1980s.

The view that the New Right ideology and the writings of Hayek underpinned the Conservative legislation has, however, been subject to criticism. Jessop *et al.* (1990: 33-4) considers that the emphasis placed on the Conservatives following the New Right ideology exaggerated its significance. Instead, they focus upon economic issues, claiming that Thatcherism represented a failed economic project. The economic policy of the early years of the Conservative government was based around 'monetarism'. This policy, as set out in the works of Milton Friedman, centred on the reduction of inflation using supply-side techniques (notably, control of the money supply). It entailed a rejection of incomes policies as a means of controlling inflation and the corresponding belief that pay levels should be determined by the free working of the labour market, the restriction of public expenditure and an abandonment of a commitment to full employment (Syrett 1997: 29). This creation of a 'free enterprise economy' required a reduction of trade union power, and the virtual abolition of institutions such as the closed shop (Moran 1979: 48; Davies and Freedland 1993: 526-38; Gilmour 1992: 97). Marsh (1992: 54-62) states:

> The Conservatives came to power in 1979 without a coherent industrial relations policy, save an ambition to bring the unions to heel.

The most severe critic of the New Right perspective, however, has been Auerbach (1990), who regards the Conservative government legislation of the 1990s as being both step-by-step and ad hoc (Miller and Steele 1993: 227). Auerbach states:

> Whilst there has at various times been an ideological commitment to Hayek detectable from the words and actions of the Conservatives, the New Right thesis provides an insufficient basis alone for the legislation (1990: 227).

He contends that many of the Conservative government's measures in the 1980s were reactive to particular concerns, which had arisen as a result of particular events and circumstances, rather than being developed around a specific ideology (Miller and Steele 1993: 226). Auerbach's evidence in support of his reactive thesis can be summarised as follows. First, the underlying aversion to trade unions had been framed by the defeat of Edward Heath in 1974 and the Winter of Discontent in 1979, rather than by an allegiance with any identifiable philosophy. Secondly, the EA 1980

and EA 1982 introduced changes designed to tackle issues which reflected traditional Conservative concerns of trade unions (the closed shop and secondary action), which went back over many years (Auerbach 1990: 236). Thirdly, the proposal contained in the Green Paper entitled Trade Unions and Their Members (1987) was influenced by one industrial dispute, the miners' strike of 1984-85, and by the conduct of Arthur Scargill, leader of the National Union of Miners, in particular. Finally, the 1989 Green Paper Unofficial Action and the Law was developed because of the upsurge of unofficial action during the 'Summer of Discontent' in 1987. This involved a number of outbreaks of militancy in both the public and private sectors, including British Rail, London Underground, the Post Office, shipbuilding at the VSEL yard in Barrow, construction and maintenance workers on North Sea oil platforms and the motor industry at both Ford and Jaguar (Auerbach 1990: 192; Undy *et al.* 1996: 131).

Many of the most significant measures taken by the Conservative governments of this period are regarded by Auerbach as falling outside the scope of the New Right agenda. First, the provisions of the 1984 and 1988 Acts were concerned with the democratisation of union internal affairs through the introduction of ballots and elections, and this was not part of the New Right thinking (Auerbach 1990: 232). Second, the member's right to restrain industrial action is not considered as distinctively Hayekian. Hayek being concerned to ensure that the regulation of trade unions should be through the general principles of the common law, which are applicable equally to all persons. Auerbach claims that this means Hayek would not approve of the creation of special rights and remedies to restrain industrial action. This view could be supported by reference to the comments of Hanson and Mather in discussing the specific issue of votes which encapsulates Hayek's position:

> A ballot ... cannot validate or legitimise the industrial action itself ... Yet the introduction of the democratic process of the ballot undoubtedly lends a spurious legitimacy to such action ... Insofar as pre-strike ballots perpetuate the strike threat, they are a clumsy and outdated concept; they are wholly unwelcome (Hanson and Mather 1988: 76-7).

Third, Hayek's preferred strategy was the complete removal of the immunities for industrial action. The Conservatives restricted immunities, but did not repeal them. Fourth, the New Right consistently advocated the direct restriction of strikes in essential services (Hanson and Mather 1988: 75), yet the Conservatives steadfastly refused to do this (Auerbach 1990: 234).

Auerbach suggests that Wedderburn's analysis assumes too readily that particular types of provision have an unmistakable ideological pedigree (Auerbach 1990: 239). He acknowledges that the New Right thesis 'contributes some basic and essential elements' to our understanding of the industrial action laws of the last decade (Auerbach 1990: 239). However, he submits that it is not the sole strand of ideology behind the measures implemented, and he identifies two other strands, which influenced the form of the legislation. These are (i) the broad commitment of the then Conservative governments, as with their predecessors, to the running of a capitalist market economy and (ii) specific and complex events which dictated the laws that were introduced (Auerbach 1990: 239).

The legislative programme and the statements of government ministers representing it have a clear affinity with the New Right ideology, in many respects. The desire to weaken trade union power, to assert individual rather than collective values, to reduce the immunities in relation to industrial action, and the deregulation of the employment relationship are all Hayekian principles, although it should also be recognised that these aims coincided with Thatcherite monetarism (Jessop *et al.* 1990: 33-4; and Gilmour 1992: 97).

However, there is much to support the view of Auerbach that the policy was step-by-step and ad hoc. There were divisions within the Conservative Party between those, such as Sir Keith Joseph and Margaret Thatcher herself, who favoured monetarist, anti-corporatist policies which entailed the reduction of trade union power (Syrett 1997: 22), and moderates such as James Prior who were entrenched in a tradition of voluntarist collectivism. However, electoral pragmatism in particular, the perceived need for the policies to have a measure of consent and likely compliance from trade unions, in contrast to the Industrial Relations Act 1971 (Prior 1986: 162-5; Dorey 1995: 158-64) proved initially stronger than ideology (Marsh 1992: 68). The slow and cautious development of Conservative policy is particularly reflected in the remarks of Mr Prior, Secretary of State for Employment 1979-1981:

> The Employment Bill was introduced in December 1979. My purpose was to bring about a lasting change in attitude by changing the law gradually, with as little resistance, and therefore as much stealth as possible. There were also dangers in having tougher legislation which employers might in practice be afraid to use. It would be wrong to pass legislation which the courts could not enforce, as had been the case with the 1971 Act (Prior, 1986: 158).

> I would not have curbed union immunities any further than they had already been restricted in the 1980 Act. I wanted to see the main provisions in our first Act given time to be accepted, and not try to rush ahead too fast (Prior, 1986: 170-171).

This, therefore, leads to the inevitable debate about which perspective has the most cogency to it. The reality is that it could be contended that the radical and pragmatic perspectives could co-exist. Dickens and Hall (1995: 257) state that it was not ideology or pragmatism but a mixture of both, with an ideological impulse finding expression opportunistically. Davies and Freedland (1993: 521) argue that the measures against the closed shop were more ideologically driven than those aimed at industrial action, where opportunistic considerations played a greater part. Fredman (1992: 24) also accommodates both perspectives, concluding that the Conservative way is not based upon a coherent masterplan drawn from the ideology of the New Right; rather, an ideology evolved which drew on the New Right and other sources in order to justify the legislative changes.

It could, however, be argued that Auerbach's criticism of Wedderburn's approach was rather contrived and exaggerated. The reasons for this are twofold. First, the ideas of the New Right clearly provided inspiration and guidance to Thatcherite thinking (McIlroy 1991: 10; and Dunn and Metcalf 1996: 69). Dunn and Metcalf's view is particularly enlightening because, whilst they acknowledge that the Conservatives did not go as far as Hayek had advanced, and agree with Auerbach about the unpredictable and ad hoc development of the legislation, they also clearly recognise the influence of Hayek's philosophy:

> We can see that the Conservatives have progressed significantly towards the Hayekian ideal. As he advocated, they have banned mass picketing, closed shops, preferential hiring of union members, and secondary action. Moreover even while failing to implement his final solution, which seems a bridge too far for any democratic government, they have tackled union power by other, more subtly penetrative means, unimagined by Hayek (Dunn and Metcalf 1996: 69).

Second, Wedderburn never actually asserted that Hayekian principles alone were behind the legislation. On the contrary, he stated:

> Hayek did not dictate the legislation. The provenance of all its provisions cannot be tracked to his work but we would be juridically tone deaf if we do not see the influence of his thought on it (1987: 15).

This statement by Wedderburn might be regarded as accurately reflecting the origin of the Conservative ideology behind industrial relations law implemented between 1979 and 1993. The views of the New Right did not dictate the legislation introduced by

the Conservatives, but they did provide inspiration and direction (Undy *et al.* 1996: 12).

One area where Auerbach (1990: 232) categorically stated that there was no link with Hayek is in the issue central to this thesis, the reform of union government. This thesis posits that the position adopted by the Conservatives in respect to union democracy was reminiscent of the arguments propounded by Roberto Michels (1911). Where applied to unions, Michels's iron law of oligarchy asserts that it is unlikely that rank-and-file members of a trade union could control officials and leaders and ultimately policy. Leaders and officials had at their disposal an array of resources, which enabled them to dominate rank-and-file members and determine policy, irrespective of the members' wishes. Michels's law leads to the accusation that unions are undemocratic because privileged leaders became more concerned with pursuing their own interests, which are divergent and less radical than those of the membership, with the result that policies move in a conservative direction. In contrast, the Conservative governments of the 1980s argued that union leaders intimidated and manipulated members into radical left-wing policies. Dunn and Metcalf (1996: 73) describe the Conservatives' perspective as a 'right-wing model which is a mirror image of Michels's' with militant union barons leading members where they would prefer not to go. Evidence of the Conservatives' perspective on union government can be gleaned from various sources. For example:

> In many trade unions the influence of the rank and file members seems to be minimal and all too often it is evident that the policies being pursued do not reflect the views and interests of the members (Democracy in Trade Unions 1983, paragraph 7: 3, HMSO).
>
> The fundamental purpose of the statutory requirements for unions to hold secret ballots is to guarantee the democratic rights of union members and thereby prevent the abuse of union power (Industrial Relations in the 1990s paragraph 9: 12, HMSO).

The Conservative perspective of militant stewards leading the moderate, peace-loving membership astray can be contrasted with the view of the Royal Commission on Trade Unions and Employers Associations (1968: 114), who noted that members are not always more conservative than their leadership, but often more militant. In the 1970s when strikes were commonplace, shop stewards were often portrayed as 'mindless militants', who coerced workers to take industrial action. However, it has

been suggested that the reality was quite different, for shop stewards often attempted to act as a restraining influence on their colleagues (Watson 1988: 27; Frenkel 2002: 152).

The Conservatives used the concept of union democracy to justify strengthening the hand of union members, in the belief that this would restrict union power. This was seen as the mechanism for remedying the ills of the trade union movement, as outlined by Hayek.

An analysis of the arguments propounded by Wedderburn and Auerbach about what drove the Conservatives to change trade union law, specifically in relation to union democracy, suggests both have a degree of credence. Dickens and Hall (1995: 257) suggest that Conservative ideology was driven by a synthesis of the two perspectives. The Conservatives saw union democracy as linked to the strengthening of the rights of the individual and as a means further to weaken the power of unions. It was believed that trade unions were a danger to orderly government and economic efficiency and progress. At the same time it was assumed that trade union members were generally moderate in their stances and at odds with many of their union leaders, both lay and official. In 1980 the Centre for Policy Studies argued that abuses by union officials were best tackled not by a frontal assault on the unions but by an oblique approach - fortifying the individual members and protecting their rights inside the union (CPS 1980: 31). Rightly or wrongly, they believed increased member participation in union affairs would moderate union activities, thereby weakening their power. They saw the arguments propounded by Hayek and those of the New Right, such as Hanson and Mather, as legitimising their ideology and the legislation that flowed from that ideology. The individualisation of trade union democracy was used as a mechanism to attempt to moderate the behaviour and the demands of trade unions. It was believed that this would have beneficial economic effects in terms of lower labour costs and increased productivity. This view can be supported by Fredman, who stated:

> The term democracy has been successfully used to mask legislation which is inimical to collective interests and worker's rights. This is evidenced by the fact that 'democratic' provisions sit side by side with legislation which gives expression to the free market by explicitly curbing union activities. By capitalising on the concept of democracy the Conservatives have successfully engendered a measure of consensus-supporting laws which are in reality highly restrictive of workers rights and trade unionism (Oxford Law Journal 1992: 25).

This thesis asserts that Conservatives attempted to use internal union reform as a mechanism to render trade unions impotent. The New Right provided a pool of ideas for regulating the activities of trade unions and rhetoric, upon which the Conservatives drew to justify their legislation (Fosh *et al.* 1993: 22; Undy *et al.* 1996: 12; Syrett 1998: 390). The rhetorical denunciation of internal trade union government as 'undemocratic' was integral to justifying the legislative measures (Syrett 1998: 391). In this respect, the process of internal union reform can be associated with the New Right philosophy. This point appears to have been neglected by Auerbach in his criticism of Wedderburn's work. The Conservatives' failure to use the actual method advocated by Hayek for reducing the power of trade unions, 'the complete removal of trade union immunities', does not mean that the writings of Hayek were not a key influence on Conservative policy. They did not pursue this tactic, which might have proved politically misguided. Tebbit (1988: 162) admitted that his ideological dislike of trade unions had to be tempered by realism of what was feasible. Conservative administrations were cautious not to let their union reforms run ahead of public opinion; this was one reason for the piecemeal development of the legislation. Targets were selected tactically, lines of least resistance followed, opportunities grasped, and holes plugged (Dunn and Metcalf 1996: 69). It was only towards the end of their period of office that they felt it seriously safe to consider outlawing strikes in essential services. This point is recognised by McIlroy (1995: 247):

> The fact that immunities have been curtailed, not abolished, simply illustrates the difference between Hayek the political philosopher and Thatcher the practising politician, required to moderate endorsement of ideas with a feel for practical barriers to translation. To expect the pedigree and detail of every legislative measure to be traceable to Hayek is to misunderstand the constraints on parliamentary politicians.

2.3 Formulating the New Law

An understanding of the backdrop to the legislation can also be gained by studying Conservative proposals for the reform of trade union internal affairs published by successive Conservative administrations (Fredman 1992: 25; Undy *et al.* 1996; Elgar

1997: 100). These enable specific reasons espoused by policymakers, which in their eyes justified the intervention of the state into the internal affairs of trade unions, to be identified. The examination also aids an understanding of the elements of the Conservative legislative approach to trade union government on which the policy was based. In 1979 Support from Public Funds for Union Ballots , a working paper was published, which asserted that the wider use of secret ballots within trade unions would produce an increase in membership participation and freedom for members to express opinions without fear of future reprisal (Undy *et al.* 1996: 77). Trade Union Immunities (1981) the first Green Paper on regulating trade unions provided two underlying justifications for union reform. Firstly, trade unions needed to be more democratic organisations, more responsive to the wishes of their membership. In particular, emphasis was placed on establishing electoral arrangements and methods of decision-making which were fair and satisfactory.

> If trade unions are to restore their authority and regain or sustain the confidence of their members they must be fully democratic both in the way they take critical decisions and in the method of electing their officials (para. 20:).

Secondly, trade union power was too great, resulting in widespread industrial action:

> There is growing public concern over the impact of unregulated industrial action. It has brought into focus the issue of the role of the law in restraining excesses and abuses of industrial power and it has led to renewed questioning of the legal framework within which employers and unions operate (para. 12):

The Conservative government asserted that wider membership participation in trade union affairs could be facilitated by the more extensive use of secret ballots within unions. It was pointed out that the practice within unions of holding secret ballots for determining key decisions was still rare, and that progress in extending the use of balloting had been slow (para.245). It was suggested that too often in recent years strikes had been called without proper consultation with union members, and sometimes against their express wishes (para.246). Secret ballots offered a solution because they would enable members to express their views free from intimidation and undue influence. It was hoped to encourage trade unions to undertake voluntary reform of their trade union processes. The emphasis on strengthening union democracy and curbing industrial action were clearly evident from this first Green Paper.

The Green Paper Democracy in Trade Unions (1983) also built upon the issues of democracy and industrial action. First, in respect to union democracy, emphasis was placed on the need to make trade union leaders 'directly responsible and accountable to the rank and file' (para.7). In particular, secret ballots of the membership for determining the outcome of union elections and for the retention of political funds were advocated. These measures were seen as crucial to changing the political complexion of trade unions in a moderate direction (Undy *et al.* 1996: 84-85). To this end the Conservatives stated:

> It has been identified that the need to reform trade union election procedures is to ensure that the leadership is more representative of the members. It is clear that few trade unions have taken the initiative in bringing about democratic reform, and the government has reluctantly come to the conclusion that some legislative intervention is necessary (Democracy in Trade Unions 1983, para. 55: 16).
>
> Unions should in the interests of their members hold ballots to confirm the support of their members for the continuation of their political objectives and funds (Democracy in Trade Unions 1983, para. 87: 24).

In regard to the second reason for intervening in the affairs of trade unions to control union power, it was claimed that:

> The unique legal status which trade unions enjoy and the power their leaders possess to initiate industrial action which can damage economic and commercial interests of others make it essential for their internal affairs to be conducted in a manner which commands public confidence (Democracy in Trade Unions 1983, para 3: 1).

The Conservatives believed that confidence in the internal decision-making of trade unions was 'bound to be lacking' if individual members were denied a fair opportunity to register their views on such matters which directly concerned them. The use of compulsory ballots on industrial action was regarded as offering a remedy to this problem. In fact it was envisaged that such ballots could make a positive contribution on two fronts. First, they would facilitate an improvement in democracy by increasing the voice and participation of the membership within trade unions. Second, they would help protect employers and the national economy from the damaging consequences of strike action (Democracy in Trade Unions 1983 paras 1-3).

However, in this second Green Paper, the Conservatives placed considerable emphasis on the need to provide greater opportunities for members to express their

views and participate in the internal affairs of trade unions. Supporting evidence for this can be demonstrated by reference to the following extracts from the Green Paper:

> If trade unions are to serve and fairly represent the interests of their members they should ensure that any important decisions are supported by a majority of the members voting in a secret ballot (Democracy in Trade Unions 1983, para. 56: 17).
>
> The methods trade unions use to consult their members are often inadequate. Few things have done more to lower public regard for trade unions than the spectacle of strike decisions being taken by a show of hands at stage-managed mass meetings to which outsiders may be admitted and where dissenters may be intimidated (Democracy in Trade Unions 1983, para. 57: 17).
>
> The argument of principle for strike ballots is therefore simple and unanswerable. The rules of some trade unions already provide for them and there is evidence that union members increasingly wish and expect to be consulted by voting in secret before they are called out on strike. The need and scope for unions to respond to this pressure from their members is clear (Democracy in Trade Unions 1983, para. 57: 17).

In 1987 the Green Paper Trade Unions and Their Members was published. It was claimed that union democracy could be improved by the introduction of fully postal ballots for union elections. The belief was that workplace ballots could be easily manipulated by trade unions. Two examples of abuse by trade unions were provided.

The first case concerned the TGWU and the 1984 election of the general secretary. An investigation carried out by the Industrial Society led to the conclusion that irregularities had occurred at eight of the branches considered. At one branch that returned 800 votes, 799 had been completed by the same person in favour of one candidate, whilst the remaining vote was spoilt. The industrial society recommended that scrutineers needed to be more questioning and should simply be 'suspicious' of branches where 85 per cent of votes were for one candidate. The second example concerned the 1986 CPSA elections for general secretary and treasurer. In this case, the Electoral Reform Society commissioned an independent enquiry. This found various electoral irregularities and suggested that a further ballot should be held under revised procedures (para.5.8).

The Conservatives also suggested that in workplace ballots there was scope for undue pressure to be placed on voters to influence their choice of candidate. The Conservatives therefore regarded the adoption of fully postal ballots in this domain as a mechanism for reducing the influence of more militant elements within trade union government.

> Workplace ballots provided scope for the coercion of non-militant and moderate members by militant and radical activists (Department of Employment, Trade Unions and Their Members (1987) para. 5.13: 24).

Two justifications for the legal intrusion into the internal affairs of trade unions are clearly enunciated in these Green Papers. First, to improve union democracy with the aim of producing more moderate decision-making. Second, to take measures to curb the ability of trade unions to take disruptive industrial action. However, the rights of members as specified by rule-books and the actions that could be taken at common law were not regarded as sufficient to safeguard their legitimate interests. A system was needed to help trade union members to pursue actions through the courts (para. 6.17). Thus, the 1987 Green Paper introduced a third element into the Conservative approach. This concerned greater measures to protect and advance the individual rights of trade union members.

In this respect the 1987 Green Paper contained a contentious development to provide protection for trade union members who chose to work rather than to take part in industrial action, even if a ballot had been held and a majority had voted in favour of the action. This proposal constituted a radical departure from the traditional collective nature of trade union democracy. The Conservative view was that individual member's required protection against the possible imposition of sanctions by the unions. The union member should be free to decide whether to break his or her contract of employment, whatever the circumstances, and regardless of whether the action was with or without immunity (Undy *et al.* 1996: 128). The measure was regarded as 'balancing the right to strike' with an equivalent 'right not to strike'. The Conservatives saw the individual's right to go to work, despite a strike call, as an essential freedom that was often challenged by those who took a hard line on the traditional philosophy of the trade union movement, which was based on the concept of collective strength through solidarity (Trade Unions and Their Members 1987: 1).

The Conservatives used in support of this initiative a statement by APEX, which reportedly expressed the view to the TUC that 'the majority decision in a ballot compels the "weaker brethren" among our membership to participate in the dispute'(Financial Times 1985). They noted that the so-called weaker brethren were those who do not wish to take industrial action and who, as individuals, choose to go

to work instead of strike. Two examples were provided in which trade unions, had in accordance with their rule-books, disciplined members for disobeying strike calls: the Teachers' dispute in 1985, involving the NASUWT, and the 1982 rail strike, involving ASLEF and the NUR. The Conservatives concluded that it was difficult to justify disciplinary action against the individual where they have merely decided that they do not wish to break their contract of employment. It was stated:

> The decision to take industrial action should be a matter for the individual. Every union member should be free to decide for himself whether or not he wishes to break his contract of employment and run the risk of dismissal without compensation. No union member should be penalised by his trade union for exercising his right to cross a picket line and go to work (Trade Unions and Their Members 1987, para. 2.22: 7).

The contrast between the Conservative perspective of union democracy and the traditional union view of union democracy is particularly emphasised in this statement. The unions perceived this as an attack on the collective decision-making process of trade unions, a 'scabs'' charter. The Conservatives, on the other hand, regarded it as preventing the individual from being sacrificed on the altar of collective interests. The emphasis in the 1987 Green Paper was on the individual, acting as an individual, not on trade union membership and the collective rights and responsibilities to which this gave rise. The Conservative perspective reflected a long English tradition, that regarded liberty and democracy as inherent in individual rights, as did the judiciary, who had difficulty in accepting the trade unions' claims for collective rights. The Courts have, over many years now, intervened in 'trade union' affairs at the instigation of members or prospective members. The Courts have looked at union/member disputes with a 'mixture' of principles drawn from contract, implying terms and striking out rules contrary to public policy, to effect a significant amount of control over union constitutions (see chapter 1, section 1.3.1).

The Conservatives ardently promoted the rights of the individual over the collective (Undy *et al.*1996: 147). Further, the view of the then government was that a significant barrier to creating democracy in trade unions was that individual members had difficulty in enforcing their rights. It observed that:

> At the moment members need to be exceptionally courageous if they are to embark on the process by any existing route of claiming and enforcing full legal rights which the law seeks to give them (para. 6.3: 28).

It was proposed to create a Commissioner for the Rights of Trade Union Members (CROTUM), with the task of helping members take legal action by providing advice and legal aid. The Conservatives saw the creation of the office as entirely consistent with and complementary to the development of the Citizens' Charter (Department of Employment, Industrial Relations in the 1990s, para .4.1; Lockwood 2000: 472).

The next Green Paper was published in March 1989, entitled Removing Barriers to Employment. This Green Paper stressed the need to reform internal union affairs in order to improve economic performance and the functioning of the labour market. However, it was also evident that controlling union power was regarded as being inextricably linked to giving union members a greater voice, to protect the rights of individual members:

> It is essential to continue the search for greater flexibility and to examine obstacles to the growth of jobs which still remain ... we must ensure that the legal framework for industrial relations is adapted to the needs of the 1990s (para. 1.7: 3).
>
> It has been a consistent principle of the Government's approach to the reform of industrial relations and trade union law that the use of legal proceedings to prevent or retrain unlawful acts should be left to those directly affected by such acts ... This applies to union members, when their union denies them their statutory rights, or fails to carry out statutory duties owed to them (para. 4.1: 14).

Another Green Paper was published in October 1989, entitled Unofficial Action and the Law: Proposals to Reform the Law Affecting Unofficial Industrial Action. This Green Paper emphasised the need to take further measures to restrict and regulate industrial action. More specifically, the then government had the control of unofficial action at the forefront of its mind:

> The industrial relations system suffers from a substantial amount of unofficial action with over half a million days lost in 1987 and almost one and half million lost in 1988 (para. 1.15: 3).
>
> Unofficial action can threaten an employer's business without the union having to take responsibility either in terms of giving financial support to the strikers or in terms of accepting legal liability for the consequences of the strike. In particular, unofficial industrial action has immunity even if there has been no secret ballot. To this extent it is easier to organise an unofficial strike than it is to organise an official strike (para. 1.14: 3).

The Conservatives wanted to make trade unions responsible for unofficial action organised by shop stewards or by other officials, whether employed by the union or not. This was to be the case, even if such officials were forbidden by the union's rules to authorise or endorse industrial action, unless the union was prepared to unequivocally repudiate it. Further, it suggested that such repudiation should be in writing, and made individually to all members of the union who might be induced to

take part in or continue with industrial action and to those who had induced (or were inducing) them to do so. The proposals demonstrated a clear intent to introduce measures to restrict the ability of trade unions and work groups to take part in lawful industrial action.

In 1991 a Green Paper entitled Industrial Relations in the 1990s was published. This contained provisions covering all three strands of Conservative policy. First, measures to improve democracy in union elections, with the aim of preventing malpractice by militant extremists. These developments seem to have been viewed as necessary, as a result of ballot-rigging in one union, the TGWU. The TGWU executive elections held in February 1990 were suspended by the general secretary and re-run. It emerged that up to 10,000 voting papers had been forged, affecting the elections for 11 out of 39 seats on the union's executive (para. 5.7).

Second, measures were also proposed purportedly to 'meet the demands of a changing labour market and a modern economy' (para. 2.3). The Green Paper proposed the extension of mandatory postal ballots to industrial action. The Conservatives asserted that postal ballots on industrial action were desirable so as to provide greater assurance that voting would be both secret and free of intimidation (para. 3.22). The Green Paper also proposed the introduction of further requirements pertaining to the conduct of industrial action ballots. These would have to be met if a trade union was to gain protection from legal proceedings. The Conservatives claimed that:

> The proposals pertaining to industrial action would enhance union members' democratic rights, promote orderly and responsible handling of disputes, and help protect businesses, jobs and the community from irresponsible industrial action (para. 3.26: 14).

Finally, the Green Paper proposed measures to strengthen the individual rights of union members, particularly in respect to monitoring the financial affairs of trade unions. The Conservatives stated:

> Trade union members are entitled to expect that union funds will be used responsibly and that their leaders will observe all the relevant rules of their union and the statutory requirements which are designed to ensure this happens (para. 7.1: 28).

The proposals to make trade unions more accountable for their financial affairs were influenced by the Lightman investigation into the NUM, in March 1990. Mr

Lightman identified a number of areas in which there had, in his view, been misapplication of union funds and breaches of fiduciary duty (para. 7.9).

2.4 Trade Union Internal Affairs and Conservative Legislation

It is apparent from this examination of Conservative proposals for union reform that the justification for the interference in the internal affairs of trade unions was made on three grounds. First, it was necessary to strengthen the individual rights of trade union members in order to alter the political complexion of trade unions in a moderate direction. Second, measures were needed to restrain the industrial power of trade unions, thereby protecting the wider community from disruption. Third, it was necessary to provide trade union members with individual rights that could be enforced through making a complaint to an external agency.

The Conservatives introduced from 1980 an individualistic perception of union government that was incrementally built upon (Dunn and Metcalf 1993: 69; Undy *et al.* 1996: 75). They wanted to challenge the traditional autonomous approach to union government (chapter 1). They decided individual member ballots, together with the creation of individual member rights that could be enforced against trade unions, were the solution to controlling militancy. By giving individual trade union members the right to participate in key areas of union activity, it was believed that more moderate policies and behaviour would emerge. The Conservatives anticipated that trade union members would use the new rights to control the actions of their leaders and would refuse to be precipitated into industrial action contrary to their best interests and to their own better judgement (Trade Unions and Their Members, para. 1.2). It was thought that significant numbers of trade union members would use the new rights to control the actions of their leaders. The expectation was that promoting greater individual participation in trade union affairs, restricting a union's ability to engage in industrial action, making trade unions more accountable and giving protection to union members would produce compliant trade unions that responded according to the wishes of their supposedly moderate members (Trade Unions and Their Members, para. 1.2). The key elements of the Conservative approach to regulating the internal affairs of trade unions are analysed below, together with a summary of the major legal provisions introduced and designed to procure the

necessary change in trade union procedures, practices and behaviour. The key elements of the Conservative approach were adapted from Dunn and Metcalf (1996: 69-74).

2.4.1 Wider Participation

In order to facilitate a greater individual voice in trade union affairs, the Conservatives were convinced that members needed to be given the right to participate in their unions through the use of secret ballots of the membership on the election of senior union executives, the maintenance of political funds and industrial action. These were seen as key mechanisms by which effective control of the union could be given back to the membership. Participation measures were viewed as 'empowering mechanisms' to make individual union members instrumental in union decision-making.

The Conservatives took the view that traditional systems of trade union government 'denied individual members a fair opportunity to register their views on all matters which directly concerned them' (Democracy in Trade Unions 1983, para. 3). They wanted to introduce measures which would prohibit what were in their view were discredited practices such as balloting at inconvenient branch meetings, indirect block voting systems for union elections, and the holding of strike votes by show of hands in the intimidatory atmosphere of the mass meeting. In so doing, the Conservatives envisaged that the participation of the moderate individual trade union member would curb the excesses of the militants within the organisation; the belief apparently being that 'rank-and-file' members would be less radical than union leaders (Auerbach 1993: 42; Undy *et al.* 1996: 113). The Conservatives referred to the 1968 Donovan Commission (Cmnd 3625 HMSO) which had criticised the conduct of the internal affairs of many trade unions. The Commission's report had drawn particular attention to the level of membership participation. It declared that the low polls typical of union elections were an unsatisfactory feature of union life, because they ran the risks of placing power in the hands of unrepresentative minorities and of weakening the authority of elected officers. Trade union members could make use of new rights to ensure that trade unions were run in accordance with the wishes of members. The Conservatives believed that traditional collective decision-making processes within

trade unions enabled leaders to be chosen by lay radical activists (shop stewards and other lay volunteers), resulting in the pursuance of a militant agenda by trade unions.

From the Conservative perspective, this led to the development of policies that were unrepresentative of the wider membership and which ran counter to the interests of society as a whole. By enabling the individual voice of the silent, apolitical, if not moderate, majority to be heard, the Conservatives' proposals were designed to subvert the traditional collectivist nature of trade union organisation. It was a basic principle of the labour movement that, if there was a collective vote and the majority decided on a course of action, all members should follow and observe the resolution. Traditional trade unions believed in collective voice, the Conservatives in individual voice. In this respect, Dunn and Metcalf (1996: 72) summed up the contrasting positions of traditional trade unionists and the Conservatives as follows:

> For the left, the crucial check on oligarchy is 'participative democracy' at workplace and branch meetings and upwards to conferences of mandated delegates. For the right, this is exactly the problem. Participation requires a dedication beyond most ordinary, commonsensical members. They leave it to the committed minority or if they do become involved, they are quickly discouraged by the labyrinthine procedures and machinations of the active cliques ... The Conservative model suggests that mandatory ballots would give the moderate majority a greater voice in key decisions, while avoiding the chore of active participation. Indeed, if legal responsibilities make the national leadership more cautious at the same time as its authority is strengthened by popular support, then the active minority, the stewards and other lay volunteers who have traditionally given British Trade Unionism some radical energy, are likely to find themselves sandbagged.

Conservative administrations introduced the following legislative provisions, designed to increase the participation and influence of individual members in trade union internal affairs:

Section 1 (3) of the EA 1980 offered trade unions financial subsidies for the holding of strike or other industrial action ballots, ballots for union elections, merger ballots, and ballots amending the rules of a trade union. These provisions did not result in the widespread adoption by trade unions of the practice of holding ballots. This was because the TUC objected to this interference in trade union affairs and recommended to affiliated unions that they neither seek nor accept public funds for union ballots. Trade unions conformed to this advice and no unions affiliated to the Trades Union Congress availed themselves of the public funds (Democracy in Trade Unions 1983).

The Conservative government considered that trade unions had declined the opportunity to reform themselves voluntarily.

In response to the failure to procure voluntary reform the Conservative government introduced mandatory balloting. Section 1 of the TUA 1984 required that every voting member of a union's NEC had to be elected every five years by secret postal ballot or workplace ballot of the membership. Section 10 (3) required the holding of a ballot prior to industrial action. Section 12 of the Act required unions to hold a ballot reviewing support for a political fund at least every ten years, replacing the single ballot requirement under the TUA 1913, and redefined the scope of the political objects of trade unions to include expenditure on advertising for a political party or candidate.

In the EA 1988 the requirement to hold an election ballot was extended to non-voting members of the union, to the president and general secretary (section 12). Ballots for union elections were also made fully postal (section 14).

2.4.2 Curbing Industrial Action

This element of the Conservative approach refers to the prescriptive requirements that had to be followed if the union was to call lawful industrial action, and to the measures introduced to make trade unions more responsible for the actions of their officials, lay organisers and membership, in an attempt to curtail industrial action and insulate the market-place from union excesses. On this point, the Conservative government stated:

> Society has a right to expect that the strike weapon will be used sparingly, responsibly and democratically. It is wholly unacceptable if this power is exercised irresponsibly or by leaders out of touch with their members' views (Democracy in Trade Unions 1983 para. 56: 17).

Between 1980 and 1993 Conservative administrations introduced legislative provisions that sought to restrict and control the activities of trade unions in the sphere of industrial action (Fredman 1992).

In the EA 1980 the scope of lawful picketing was diminished, with picketing protected only at a striker's own place of work (section 12). The Act also removed

many of the immunities for secondary action (section 17). The EA 1982 removed the immunity of trade unions from liability in tort, established by the Trade Disputes Act 1906, allowing employers to proceed against unions, not merely individual union officers, in relation to unlawful industrial action (section 15). The Act also extended the power of the employer to dismiss strikers or those taking part in industrial action (section 9).

The introduction of the Trade Union Act 1984 marked a significant stage in the Conservative government's attempts to hamper the ability of trade unions to engage in industrial action. The Act prescribed detailed requirements which had to be satisfied for lawful industrial action to be taken. First, it required the holding of a ballot prior to industrial action as a precondition for obtaining legal immunity from civil actions (section 10 (3)(a). Secondly, the result of the ballot had to be a majority in favour of the industrial action (section 10 (3)(b). The third requirement of a ballot was that the first authorisation or endorsement of the tortious act must have taken place after, but within four weeks of the ballot (section 10 (3)(c). Where the ballot was held on more than one day, the date of the ballot was treated as being the last of those days (section 10(5). Finally, a valid ballot needed to comply with a list of requirements contained in section 11. Section 11 (1) carefully defined the electorate as all those members it is reasonable for the union at the time of the ballot to believe will be called upon to take strike or other industrial action. No other persons were to be allowed to vote in the ballot (s.11 (1) (b)). The section also covered the balloting process. Section 11 (3) required that the manner of voting must be by the marking of a ballot paper; a show of hands at a branch meeting was not acceptable. The Act provided that the member must be given the opportunity to vote by post or at the workplace (section 11(6)). The ballot had to be conducted in secret (section 11(7)), members had to be allowed to vote without interference or constraint from the union (section 11(5)) and without incurring any direct costs to themselves (section 11(5).

Section 11 (4) related to the wording of the ballot paper itself, which was to be drafted so as to encourage members to vote against industrial action, the so called 'industrial health warning'. The question required members to indicate whether they were prepared to take part in industrial action involving a breach of their employment

contracts. Aside from having to obtain a 'yes or no' answer, the union was able to phrase the question how it pleased and the words 'breach of contract' did not need to appear on the ballot paper, though the union had to make clear that the action would constitute such a breach (Undy *et al.* 1996: 125).

Further changes in the law on industrial action balloting were subsequently made in the EA 1988. Firstly, it introduced the right for a union member to restrain his/her union legally from unlawfully calling industrial action (section 1). Secondly, the form and content of the ballot paper were to be subject to more detailed regulation. In particular section 11 of the TUA 1984 was amended (schedule 3(8)(c). The ballot paper had to contain the following prescribed statement which could not be qualified or commented upon by anything elsewhere on the ballot paper:

> If you take part in strike or other industrial action, you may be in breach of your contract of employment.

Third, the 1988 Act required industrial action to be supported by a majority in a separate ballot in each separate workplace (section 17). The 1988 Act also made it 'unjustifiable' for unions to discipline members for refusing to take part in industrial action (section 3). The courts were empowered to award up to £30,000 to a union member for such infringements (section 5(8)).

The EA 1990 included an array of provisions designed to curb industrial action: removing immunity for all forms of secondary action (section 4); widening the range of persons who could render a union liable in tort for unofficial action (section 6); tightening the requirements for repudiation of unofficial action, which could enable unions to escape liability section 6(5); permitting employers to dismiss selectively employees taking part in union action (section 9) and widening the extent to which a union could be vicariously liable for the acts of any groups, including an official of the union (section 6(3)). This raised the possibility that industrial action organised by a group acting outside the constitution of the union, but including an official of the union, could be held to be the action of the union.

The Conservatives were particularly concerned with the problem of unofficial industrial action. The predominant view of the then Conservative government was

that taking unofficial action did not necessarily reflect the breakdown within trade unions of internal authority. They believed that although a strike might not be authorised by a union, it might nevertheless be in a union's interests. With little supporting evidence, they claimed that there had been cases where trade unions turned a blind eye to or had secretly encouraged unofficial action (Unofficial Action and the Law, 1989, para. 1.13).

TURERA 1993 introduced further amendments to the law pertaining to industrial action ballots, requiring all industrial action ballots to be fully postal, rather than workplace (section 17); requiring the appointment of an independent scrutineer to oversee industrial action ballots (section 20); an obligation on a union to give written notice to each employer being balloted (section 21); and giving individuals the right to bring 'cease and desist' applications, seeking an injunction to restrain unlawful industrial action which would affect the supply of goods or services to that individual (section 22). This cause of action would apply even if the members themselves for whom the democratic rule was introduced had no complaint. The Conservatives were convinced that if unions faced the prospect of unlimited fines and sequestration of their assets for contempt if injunctions were flouted, this would discourage them from engaging in militant trade union activity. The intent was to make union bureaucrats reluctant to step beyond the immunities and risk financial damage to the union Dunn and Metcalf (1996: 70).

2.4.3 Accountability

The Conservative interest in the issue of accountability reflected their desire to facilitate greater openness in the relationship between trade unions and their members. They suggested (again with little supporting evidence) that trade unions could take action against union members or make decisions affecting them without appropriate account being taken of their own wishes (Democracy in Trade Unions 1983, para. 1). The Conservatives portrayed the situation as one where intervention was necessary to 'ensure that those who exercised power in the name of the membership were properly accountable to members' (Democracy in Trade Unions 1983, para. 3). The view depicted was one of irresponsible leaders flouting the interests of trade union members. This was because union rule-books did not provide union members with

extensive rights of membership. Furthermore, it was alleged that significant numbers of trade union rule-books allowed union members access to only limited amounts of information about internal union affairs. The Conservatives therefore wanted to introduce mechanisms to make trade unions directly accountable to members.To this end, the following provisions pertaining to accountability were introduced.

First, the TUA 1984 s. 18 gave a member a statutory right to insist that an employer cease operating the 'check off' in relation to that part of the member's union dues which was attributable to the political levy. The Conservatives regarded this provision as necessary because the existing system of 'check off' deprived the member of his/her opportunity to decide, each time the political fund contribution became due whether to refuse to pay it (Democracy in Trade Unions 1984, para. 120: 35). It was common practice for trade unions to collect membership contributions by 'check off' (Daniel and Millward, 1983: 74). 'Check off' means that membership dues were deducted by the employer from the member's pay. Many employers, for the sake of convenience, deducted both ordinary contributions and the political levy from all members, leaving the union to reimburse exempt members for the latter.

Section 3 of the EA1988 placed restrictions on the right of a union to discipline members for a breach of union rules. The most controversial of the measures introduced by the EA 1988 established the right of an individual member not to be 'unjustifiably disciplined' for refusal to participate in industrial action, even after a vote in favour. This struck at the heart of union autonomy, since traditionally whether a member could be subject to some disciplinary action depended on what the rule-book stated, subject to the supervision of the courts. Dunn and Metcalf (1996: 74) state that such measures were thought desirable because they would help 'individual members to exit from collective decisions or express a minority view without fear of retaliation from the militant union barons'. The Conservatives justified this encroachment into the internal affairs of trade unions on the following grounds:

> Union rules are sometimes framed to give the union very wide powers and the rules of natural justice are unlikely to protect a member against, for example an excessively heavy fine, which he simply may be unable to pay (Democracy in Trade Unions 1984, para. 120: 35).

The effect of the provision is that trade unions cannot deny lawfully membership to, or expel from membership, individuals whose views are diametrically opposed to

those of the membership as a whole. This runs counter to the dictum of Lord Diplock in Cheall V Apex [1983] IRLR 215 (discussed in chapter 1), who affirmed that 'freedom of association can only be mutual; there can be no right of an individual to associate with other individuals who are not willing to associate with him'. Under the present law, an individual is accorded the choice of whether to associate with those whose aspirations he or she does not share; the remainder collectively has no such choice. Although, ultimately unions cannot be forced under statute to retain dissidents in membership, the price of exclusion or expulsion can be a severe one. As Martin *et al.* (1995: 148) noted:

> Collective discipline was seen by the government as enabling left-wing union leaders to dominate union affairs; undermining collectivism was more than simply a means of encouraging individualism, it was a means of undermining militant influence.

The EA 1988 Act also sought to give individual members greater rights over the use of trade union funds. The Conservatives observed that union rule-books generally provided for the normal conduct of the union's affairs, and this often placed control of union funds exclusively in the hands of senior trade union officials. Several provisions were introduced to tighten the controls over how senior officials could apply union funds; three, in particular, merit mentioning. First, s.6 gave trade union members the right to inspect current accounting records, and to be accompanied by professional advisers. Second, s.8 limited the circumstances in which officials could be indemnified by the union in respect of damages awarded or fines imposed upon them as individuals. Finally, s.9 placed a statutory duty on trustees not to apply union funds for any unlawful purpose and to keep members informed about their union's financial affairs.

TURERA 1993 introduced a series of rights in relation to union membership. Section 14 gave trade union members the extensive statutory right not be excluded or expelled from trade union membership outside specified circumstances. Section 15 made changes to the check-off arrangements introduced by the TUA 1984. The 1993 Act required that every three years union members must give written consent to their employers if they wish them to continue to deduct union membership fees from their pay via the check-off arrangement. The then Conservative government believed that individual union members should have the right to decide for themselves whether or not to pay their union subscriptions - including any special levies which might be

collected through their subscriptions - by deductions from their pay (Industrial Relations in the 1990s, para 6.27: 26). Section 16 extended the actions for which union members had the right not to be unjustifiably disciplined to include:

i) failing to agree, or withdrawing agreement, to the making from his wages (in accordance with arrangements between his employer and the union) of deductions representing payments to the union in respect of his membership;

ii) resigning or proposing to resign from the union or from another union, becoming or proposing to become a member of another union, refusing to become a member of another union, or being a member of another union;

iii) working with, or proposing to work with, individuals who are not members of the union or who or are not members of another union;

iv) working for, or proposing to work for, an employer who employs or has employed individuals who are not members of that or another union or who are members of another union or;

v) requiring the union to do an act which the union is, by any provision of TULRCA 1992, required to do on the requisition of a member.

The government perceived these amendments to the law as being necessary for the protection of individual choice and freedom. This was particularly evident from the comments of the government concerning the right of an employee to join the trade union of his/her choice. The government took the view that the application of the Bridlington principles (procedures which prevented trade unions poaching members from each other) denied individual choice. They relied on evidence from two cases. The first concerned USDAW members who wanted to transfer their membership to the GMB because of disagreement with USDAW's policy on the issue of Sunday trading. Those members were, apparently, prevented from transferring from USDAW to the GMB by the request of USDAW under the Bridlington principles. The

government considered this as unacceptable since, in their view, it effectively meant the members were locked into a union with whose policy, on an important issue of conscience, they fundamentally disagreed. The second example concerned UCATT members who were prevented from joining the then EETPU. The Conservatives also believed that the measure would weaken union control over particular jobs, and thereby lead to increased flexibility at the workplace (Addison and Siebert 2000: 11).

2.4.4 Protection

This element of the Conservative approach was deemed necessary because the individual rights of trade union members were not adequately protected from the coercive forces of trade unions (Democracy in Trade Unions 1983, para. 3). The view of the then Conservative government was that it would not be enough to provide individual union members with proper and effective rights; more had to be done. It would be necessary to ensure that any such rights were 'fully developed so that they provide the ordinary member with the effective protection that he or she might reasonably expect' (Trade Unions and Their Members 1987, para. 1.6: 2).

The Conservatives wanted to develop a potent mixture of personal and procedural rights that members could enforce against trade unions. They wanted to provide as many avenues as possible for trade union members to challenge the decision-making processes of their union. Accordingly, it was proposed to give members new procedural rights to pursue grievances against their unions, where there was a breach of a union rule or statutory provision. The Conservatives sought to provide members with remedies and effective protection against what were viewed as real abuses. It was suggested that certain official bodies be given extensive powers to protect the rights of individual trade union members. To this end Conservative administrations introduced the following legal provisions:

The TUA 1984 extended the functions of the Certification Officer, giving this official the responsibility of approving the ballot rules of a trade union pertaining to political funds ballots (section 13), and the jurisdiction to receive and determine complaints that a trade union failed to comply with one or more provisions relating to the secret ballots for the election of senior officials (section 5).

The EA 1988 s.19 established CROTUM, to assist any union member who was taking or contemplating taking legal action against his/her union or an official or trustee of his/her union in respect of certain breaches of statutory duties and/or breaches of union rule. This developments reflected a Conservative desire to provide an ombudsman/watchdog 'with teeth and clout' that would act in the interests of and on behalf of individual members. In other words, the Conservatives wanted CROTUM to encourage members to hold their unions accountable for their actions and protect the union member from unfair treatment or militant action.

Section 4 of the EA 1988 gave a trade union member who claimed that they had been unjustifiably disciplined the right to complain to an employment tribunal.

The EA 1990 s.10 extended the role of CROTUM. The provisions were concerned with protecting union members against abuses of power by their union. Section 10 gave details of proceedings in respect of which the assistance of the Commissioner could be provided. The proceedings for which CROTUM could give assistance at this time all related to the enforcement of union members' statutory rights and of statutory duties owed by unions to their members. The Act extended the role of CROTUM to enable assistance to be given in proceedings arising from complaints that union rule-book provisions had not been, or will not be observed. The Commissioner could provide assistance for actions in the High Court or Court of Session in Scotland. Section 11 enabled the Commissioner, at the discretion of the assisted person, to appear alongside the assisted person in the title of legal proceedings. The justification for this proposal was that it would give the assisted person an assurance that the Commissioner stood behind him/her in legal proceedings, and would increase the public awareness of the role of the Commissioner. In around seventy five per cent of cases the Commissioner's name was added to the title of proceedings (Morris 1993: 104).

TURERA 1993 contained two provisions relating to the protection of trade union members' legal rights. Section 10 expanded the role of the CO, despite critical comments being made in Parliament about the way the CO's role involves

administration, regulation, investigation and judicial-decision making. The 1993 Act impacted on the functions of the CO in two ways. Firstly, it extended his powers, particularly in relation to overseeing trade union finances. Secondly, it placed new duties on trade unions in relation to matters on which members can lodge complaints for investigation. Powers were provided which enabled the CO to require a trade union to produce documents relating to its financial affairs at such time and place as may be specified. Further provisions enabled the CO to appoint, in certain circumstances, inspectors to investigate the financial affairs of a particular trade union and to make a report. TURERA 1993 also provides for additional information to be included in a trade union's annual return and for members to receive a statement about the financial affairs of their trade union. The CO must investigate any complaint made and decide it completely impartially, on the facts of the case and in the light of the representations made by the parties concerned.

Section 14 TURERA 1993 gave an individual member who claimed that he/she had been unfairly excluded or expelled from a trade union the right to complain to an employment tribunal.

The desire to introduce a programme of measures giving the individual trade union member rights, which could be enforced against trade unions, was predicated upon the mobilisation of dissident members to control unions from within (Auerbach 1990: 165). Trade union members could free themselves from the tyranny of the majority by making decisions about strikes and elections in the confines of their own home, protected from the 'intimidation' of mass meetings. Trade union members would be secure in the knowledge that they would be protected from being disciplined by their unions for refusal to obey a strike call.

Table: 2.1 Summary of Conservative Legislation and How Each is Reflected in the Conservative Approach

Title and Date of Act	Main Purpose of Provisions of the Act
Employment Act 1980	
Restricted secondary picketing	Curbing industrial action
State funds for elections	Participation of union members
Employment Act 1982	
Definition of trade dispute tightened	Curbing industrial action
Trade union liable for unlawful acts	Curbing industrial action
Facilitated selective dismissal of strikers	Curbing industrial action
Trade Union Act 1984	
Mandatory ballots for elections to NEC	Participation
Ballots before industrial action	Participation and curbing industrial action
Ballots required on political funds every 10 years	Participation
Employment Act 1988	
Political fund ballots required to be postal	Participation
Ballots for union elections extended and made postal	Participation
Restrictions on disciplining members	Protection of union members
Members given right to inspect union rule-books	Accountability
CROTUM established	Protection
Employment Act 1990	
Union liable for unofficial action unless written repudiation	Curbing industrial action
Unofficial strikers can be selectively dismissed	Curbing industrial action
All secondary action rendered unlawful	Curbing industrial action
Trade Union Reform and Employment Rights Act 1993	
Strike ballots to be postal	Curbing industrial action & participation
Written ratification of check off required every 3 years	Accountability of the union to members
Rights of membership	Accountability
Extension of CO role	Protection & accountability
Right to complain about unfair expulsion or exclusion	Protection
Commissioner for the protection against unlawful industrial action	Curbing industrial action
Citizens right to sue for unlawful industrial action	Curbing industrial action
Seven day notice requirement for industrial action	Curbing industrial action

2.5 Conclusions

This chapter has demonstrated that an important area of concern for Conservative administrations was the internal operations of trade unions. First, they wished to strengthen the rights of individual trade union members. This involved a shift towards an individualistic approach to union decision-making that would increase the participation and influence of the ordinary member in union affairs, while at the same time restricting the excessive concentration of power in the hands of militant trade union leaders.

Second, the Conservatives desired to protect the economy and wider community from the damaging effects of industrial action. They sought to change the internal process by which the decision to engage in industrial action was taken, making it more difficult to call industrial action. It was also envisaged that the moderate rank-and-file member would vote against industrial action.

The Conservatives believed that trade union leaders could dominate rank-and-file members and determine policy irrespective of the wishes of the membership. They saw the views of New Right thinkers such as Hayek, Hanson and Mather, as justifying the increased regulation of trade unions. However, where they deviated from the New Right was in their approach to solving the union problem. The Conservatives regarded the New Right approach of completely abolishing trade union immunities as politically unwise. Instead, they thought unions could be controlled, in part, by internal reform of union government. They, therefore, attempted to ensure trade unions operated according to a particular conception of union government. The Conservative approach was based on a 'mix' of ideological history, opportunism and political pragmatism. This notion of a 'mix' also seems to best sum up the Conservatives' collective motives, which included the weakening of trade union power, the democratisation of trade unions, and the weakening of the election prospects of the labour movements other 'wing', the Labour Party. Davies and Freedland suggest that restrictions upon trade unions formed part of a broader series of measures and policies aimed at restructuring the labour market, giving freer play to market forces in order to generate an 'enterprise economy' (1993: 426).

The Conservatives aspired to make trade union leaders more accountable to the individual membership. They argued that existing trade union practices for consulting the membership in the areas of union elections, the political fund and industrial action were undemocratic and opened the way for intimidation. This was to be tackled in two ways. First, through the use of secret ballots of the membership, which were aimed at facilitating a move of trade union leaders from 'irresponsible militants to responsible trade union leaders'. Second, the Conservatives sought to place in the hands of individual trade union members more power to challenge the decisions of their representatives in the courts via the Commissioner for the Rights of Trade Union Members (CROTUM), through complaint to the Certification Officer (CO), or via employment tribunals. Through these devices, the Conservatives believed that a responsible union bureaucracy would emerge to take control over the activities of full-time and lay officials.

In sum, the Conservatives were advocating a form of trade union government designed to vest individual members with new rights that could be enforced in new ways. The legislation sought to give the individual member greater influence over key decisions, and opportunities for complaining about the actions of their trade unions and the decisions of senior officials; this is what the Conservatives meant by democracy. It is the effect of these new individual rights of trade union members and whether they achieved what they were designed to achieve that will come under scrutiny in the remainder of this thesis.

Chapter 3 - Research Questions and Methodology

3.1 Introduction

In this chapter the research issues are identified and the research methodology described and explained. Section 3.2 discusses and summarises the research issues. The following section 3.3 explains the methodological approach taken. In section 3.4 the research methods used in the study are outlined and evaluated. Section 3.5 presents the data-collection techniques applied to the study. Section 3.6 goes on to explain how the data collected was analysed. Finally, there is a conclusions and summary section.

3.2 The Research Questions

The objective of this research was to analyse the impact of Conservative legislation on union government. The research questions in this study were developed and framed in such a way that answering them would accomplish the objective set for the study.

Mason (1996: 15) makes the case for the critical importance of carefully formulated questions in the process of researching. She argues that research questions:

> should be clearly formulated, intellectually worthwhile, and researchable, because it is through them that you will be connecting what it is that you wish to research with how you are going about researching it. They are vehicles which you will rely upon to move you from your broad research objective to your specific research focus and project, and therefore their importance cannot be overstated.

The research questions were framed following reflection on the critical analyses of the published literature concerning the legal regulation of trade unions (outlined in chapter 1) and the development of Conservative thought (contained in chapter 2). This was to ensure that the research questions were not framed too early in the study, which might have led the researcher to overlook areas of theory or prior experience that are relevant to the understanding of what is going on (Maxwell 1996).

An analysis of the development of Conservative policy enables several motives for the introduction of the post 1979 Conservative legislation to be identified. These include: the weakening of trade union power; the democratisation of trade unions and

the weakening of the election prospects of the labour movements other 'wing', the Labour Party. The analysis of Conservative thought contained in chapter 2 asserted that a central justification for state interference in the internal affairs of trade unions was the need to reform trade union government. In this context, intervention was regarded as necessary on several grounds. First, union leaders did not adequately reflect the views of their members. Second, the rights of members needed to be adequately protected. Third, senior officials of trade unions needed to be made properly accountable to members for their actions. Chapters 1 and 2 demonstrated the concern successive Conservative governments held about the ways in which decisions were made and policies implemented within unions. The nature and level of membership participation within trade union organisations was identified as a particular cause for concern. In sum, the Conservatives came to the conclusion that trade unions should be encouraged to adopt an externally constructed approach to union decision-making in order to remedy the perceived defects in internal union government.

The research examined the extent to which trade union members took the opportunities presented to them through the introduction of secret ballots and statutory rights of complaint to exercise greater control over union affairs. Election ballots and political fund ballots were posited by Conservative administrations as mechanisms that could be used to change the internal political complexion of trade unions. Union elections would procure more moderate trade union leaders and policy (Undy *et al.* 1996). Political fund ballots would give members a degree of control over union funds and a strong voice over the unions' political objects. The internal decision-making of trade unions would be more representative of the membership, enabling leaders to better serve and represent the interests of members (Mackie 1992; chapter 2). By making the union leadership more accountable to the membership the Conservatives believed that they could reduce union power and influence.

Industrial action ballots were portrayed by the Conservative Party as the key to ensuring that the strike weapon was used sparingly, responsibly and democratically. The industrial power of trade unions needed to be restrained in order to protect the community as a whole. The Conservatives stressed the damaging impact strikes

could have on economic performance, living standards and levels of employment (Democracy in Trade Unions (1983), para. 56). The requirement to consult members was expected to act as a moderating influence on calls for strikes or other industrial action, thereby saving the external community from the damaging consequences of widespread industrial disruption (Mackie 1992; Undy and Martin 1984; CPS 1980).

Further to encouraging membership participation through ballots, the Conservatives also sought to strengthen the influence of individual members by providing them with statutory rights that could be enforced through the courts. It was a consistent principle of the Conservative approach to the reform of industrial relations and trade union law that the use of legal proceedings to prevent or restrain unlawful acts should be left to those directly affected by such acts. This applied not only to employers and their customers and suppliers who might be damaged by, for example, unlawful industrial action, but also to union members when their union denied them their statutory rights or failed to carry out statutory duties owed to them (Lockwood 2000). It is the control of trade union affairs by members that comes under scrutiny in this thesis. The individualistic approach is subject to scrutiny to see how effective it has been in producing the desired changes to the internal affairs of trade unions.

The investigation was designed to enable the identification of any changes in internal trade union affairs and the impact of these changes on their policies or behaviour. The broad research questions are outlined below:

1 *Did Conservative balloting legislation pertaining to elections and the political fund result in changes to the internal affairs of trade unions?*

2 *What impact did the introduction by the Conservatives of industrial action ballots have on the procedures, practices and behaviour of trade unions?*

3 *Did Conservative provisions granting individual members the right to complain about the internal affairs of trade unions lead to a significant number of members complaining about breaches of union rule or statute?*

These research questions are at the heart of the research issues discussed in chapter 1, section 1.6. Although the research questions are broad, they are key questions that need to be answered and that have been inadequately addressed in previously published work.

3.3 Methodological Approach

The following section outlines the general methodological approach adopted. This broad discussion of the available approaches provides a context within which to consider the specific research methods employed.

It is useful here to distinguish between 'methodology' and 'method'. According to Schwandt (1997: 93), methodology is:

> The theory of how inquiry should proceed. It involves analysis of the principles and procedures in a particular field of inquiry (that, in turn govern the use of particular methods).

Whereas, method 'denotes a procedure, tool, or technique used by the inquirer to generate data, analyse data, or both' (Schwandt 1997: 91).

The research methodology considers the specific methods of investigation; the approaches and techniques adopted; and the ways in which these combine to form an integrated research strategy; specifically: the development of research relationships; case selection and sampling decisions; data-collection methods; data-analysis techniques.

3.3.1 The Case for Methodological Eclecticism

In addressing the research issues an eclectic approach was deemed most appropriate. As a result, the thesis adopted a multi-method approach, with specific methods and techniques being selected after consideration of: the purposes of the study; the nature and characteristics of the phenomena under scrutiny; the questions asked about the phenomena; the researcher's understanding of the context within which the study was being conducted; the practical and resource limitations to the study; and the researcher's epistemological and philosophical preferences.

Research methodologies in the social sciences have traditionally been dichotomised into two positions: positivist and phenomenologist. Positivism, a term first used by August Comte (1798-1857), has been used to describe a philosophy of strict empiricism. That is, one in which 'the only genuine or legitimate knowledge claims are those founded directly on experimental investigation and observation' (Schwandt 1997: 119). This position holds that social phenomena can be investigated in the same manner as an inanimate object. By contrast, the essence of phenomenology is a rejection of scientific realism and of claims that empirical science is the only valid way to understand the external world. Phenomenologists hold that 'as self-interpreting beings, humans, cannot be studied using the same methods and techniques as natural objects and events.' (Huczynski and Buchanan 1991: 13). When presented in this stereotypical manner, these two extreme and competing views have fuelled the controversy within the debate in social science research about the appropriateness of particular research methodologies: methodologies which are suggested to be derived from these distinctive philosophical positions. The result of this debate has been that certain central assumptions and methodological approaches have become identified and associated with each paradigm. The following table summarises the key features identified by Easterby-Smith *et al.* (1991: 27) as marking the poles of this dichotomy.

Table 3.1 Key Features of Positivist and Phenomenological Paradigms (source Easterby-Smith et al. 1991: 27)

	Positivist paradigm	*Phenomenological paradigm*
Basic beliefs:	• The world is external and objective. • Observer is independent. • Science is value-free.	• The world is socially constructed and subjective. • Observer is part of what is observed. • Science is driven by human interests.
Researcher should:	• Focus on facts. • Look for causality and fundamental laws. • Reduce phenomena to simplest elements. • Formulate hypotheses and then test them.	• Focus on meanings. • Try to understand what is happening. • Look at the totality of each situation. • Develop ideas through induction from data.
Preferred methods include:	• Operationalising concepts so that they can be measured. • Taking large samples.	• Using multiple methods to establish different views of the phenomena. • Small samples investigated in depth over time.

Gill and Johnson have identified a number of methods which have traditionally been associated with the positivist/nomothetic and humanist/ideographic paradigms (see Table 3.2). These methods can be differentiated on the basis of 'their relative emphasis on deduction or induction, their degree of structure, the kinds of data they generate and the forms of explanation they create' (Gill and Johnson 1997: 37).

A number of scholars (see for example: Morgan and Smircich 1980; Bryman 1988; Evered and Louis 1991; Easterby-Smith 1994; Huberman and Miles 1998; Gill and Johnson 1991, 1997; Guba and Lincoln 1994; Silverman 1993, 1997, 2000) have explored the relative strengths and weaknesses of the positivist and phenomenologist paradigms. There is broad agreement amongst these authors about the potential contribution of each approach to our understanding of human behaviour. However, according to these writers, the traditional paradigm boundaries have become increasingly blurred by theoretical and methodological challenges to these dichotomous stereotypes. The argument for methodological eclecticism centres on the pragmatic view that research methodologies should not be limited by adherence to a strictly positivist or phenomenologist position, but that methods should be selected on the basis of their suitability for addressing the specific research questions under consideration.

Table 3.2 Paradigm Methodologies and Associated Methods

(source: Gill and Johnson 1991: 36; 1997: 37)

	Positivist/Nomothetic methods emphasise		Phenomenologist/Ideographic methods emphasise
	← Laboratory Experiments, Quasi-experiments, surveys, action research, ethnography →		
1.	Theory produced through the process of deduction.	vs	Theory produced through the process of induction.
2.	Explanation reached via analysis of causal relationships and explanation by covering-laws (etic).	vs	Explanation reached through understanding of subjective meaning and systems (emic).
3.	Generation and use of quantitative data.	vs	Generation and use of qualitative data.
4.	Use of various controls, physical or statistical, so as to allow the testing of hypotheses.	vs	Commitment to research in everyday settings, to allow access to, and minimise reactivity among the subjects of research.
5.	Highly structured research methodology to ensure replicability of 1, 2, 3, and 4.	vs	Minimum structure to ensure 2, 3 and 4 (and as a result of 1).

Morgan and Smircich (1980) reject the rigid association of particular methods with specific paradigms:

> any given technique often lends itself to a variety of uses according to the orientation of the researcher ... their precise nature ultimately depends on the stance of the researcher and on how the researcher chooses to use them." (Morgan and Smircich 1980: 496).

Silverman (1993: 9) makes a similar point: 'Methods are techniques which take on a specific meaning according to the methodology within which they are used'. He identifies four major methods used by researchers (see Table 3.3) to illustrate the contention that each method can be used in both qualitative and quantitative research studies.

Table 3.3 Different Uses for Four Methods

(source: Silverman 1993: 9).

Method	Methodology	
	Quantitative research	Qualitative research
Observation	Preliminary work, e.g. prior to framing questionnaire.	Fundamental to understanding another culture.
Textual analysis	Content analyis, i.e., counting in terms of researchers' categories.	Understanding participants' categories.
Interviews	'Survey research': mainly fixed-choice questions to random samples.	'Open-ended' questions to small samples
Transcripts	Used infrequently to check the accuracy of interview records.	Used to understand how participants organise their talk.

Bryman (1988: 153) argues that a major barrier to integrating quantitative and qualitative research methods has been:

> the view that quantitative and qualitative research are based upon fundamentally incompatible epistemological positions. However the association of quantitative and qualitative research with different epistemological positions is largely assumed. There is much to suggest that the assumption is questionable when the practice of social research is examined.

Observations of research practice made by Easterby-Smith *et al.* and by Miles and Huberman support these assertions:

> Although there is a clear dichotomy between the positivist and social constructionist world views, and sharp differences of opinion exist between researchers about the desirability of methods, the reality of research also involves a lot of compromises between these pure positions. (Easterby-Smith et al. 1991: 43)

> At the working level, it seems hard to find researchers encamped in one fixed place along a stereotyped continuum .... In epistemological debates it is tempting to operate at the poles. But in the actual practice of empirical research, we believe that all of us ... are closer to the centre, with multiple overlaps. (Miles and Huberman 1994: 4)

Gill and Johnson (1991) argue that viewing research methodology as a dichotomy is fundamentally flawed. In summary they posit:

> We therefore come to the conclusion that all research approaches may have something to offer and that there is no independent form of evaluating different research strategies in any absolute terms. The consensus seems to be in favour of multi-method strategies. By multi-method strategies, we imply a strategy that requires not only a convergence of substantive findings derived from a diversity of methods of study, but also a debate about the contribution of each approach used. (Gill and Johnson 1991: 147)

Taken collectively, the work of these authors makes a compelling argument for methodological eclecticism as a way of drawing on the inherent strengths of the two traditional paradigms and of avoiding the methodological tunnel-vision identified by George Homans: 'People who write about methodology often forget that it is a matter of strategy not of morals'. (cited by Miles & Huberman 1994: 2)

This thesis adopts a multi-method approach to provide answers to the research question under consideration. The justification of the methodology and methods adopted does not rely upon their consistency with, and logical connections to, an over-arching research paradigm. Instead, the use of specific methods is defended by reference to their utilitarian potential to provide the data collection and analysis necessary to answer the research questions.

3.3.2 Quantitative or Qualitiative Approaches?

The starting point of this process was a consideration of the study's purposes and the nature of the research questions being asked. As outlined earlier in the chapter, the research purpose was to study the impact of Conservative legislation on the procedures, practices and behaviour of trade unions. A qualitative approach to the study of changes in the internal affairs of unions seemed particularly appropriate since, as Miles and Huberman note (1994: 10):

> Qualitative data analysis provides well-grounded rich descriptions and explanations of process in an identifiable local context. With chronological data one can preserve chronological flow, see precisely which events led to which consequences and derive fruitful explanations.

In addition, this methodology is consistent with the leading research previously undertaken in this field. There is an extensive body of existing literature dealing with the labour legislative policies of successive Conservative governments. This literature was reviewed in chapter 1 and the research methods that were deployed in

these previous studies were adopted here. This consistency is important, for as Yin (1994: 25) states:

> Most researchers will want to compare their findings with previous research; for this reason, the key definitions (of the case) should not be idiosyncratic. Rather, each case study and unit of analysis either should be similar to those previously studied by others or should deviate in clear, operationally defined ways. In this manner, the previous literature therefore can also become a guide for defining the case and unit of analysis.

However, a quantitative approach was required to analyse the number of complaints made by trade union members to CROTUM and the CO, and also the voting outcomes and behaviour of trade union members in relation to trade union ballots.

3.4 Research Methods: Case-Study Research

There are a variety of different methods that can be deployed when engaging in social science research. Gill and Johnson (1991) identify three broad categories: experimental, survey and case study.

The experimental (Hagan 2000; Miller 1991; Bynner and Stribley 1979) approach to gathering data has been ruled out as a practical and valid means of investigating the changes in the internal affairs of trade unions. A fundamental requirement of an experimental design is that the research has control over the variables concerned. It would be extremely difficult, if not impossible, to control a sufficient number of the multiplicity of variables that come into play with such a relatively ambiguous and complex phenomenon as the impact of legislation on the procedures, practices and behaviour of trade unions.

The survey method is the most widely used method for collecting data within the social sciences (Babbie 1990; Bulmer, 1994; Edwards *et al.* 1997; Fowler 1993). The survey method is efficient in terms of cost and effort and enables large amounts of data to be captured and manipulated (Edwards *et al.* 1997). A significant drawback of the survey approach is that such data lack the depth and richness of the case-study method (Taylor 1978).

The case-study approach is the chosen method adopted in this thesis. Case studies are particularly useful in depicting a holistic portrayal of an organisation's experience of change (Miles and Huberman 1994). This is achieved by seeking patterns and themes

in the data, and by making further analysis through cross-comparison with other cases. Critics of the case-study method believe that the study of a small number of cases can offer no grounds for establishing reliability or generalisability of findings. Others feel that the research provides merely an assembly of anecdote and personal impressions, strongly subject to research bias. Some dismiss case-study research as useful only as an exploratory tool (Goldhor 1972). Yet researchers continue to use the case-study research method with success, in carefully planned and crafted studies of real-life situations, issues and problems (Eisenhardt 1989). Schwandt suggests that the *case*-study method can be best understood by distinguishing it from *variable* study: 'In case study, the case itself is at centre stage, not variables' (Schwandt 1997: 13).

In his seminal work on case-study research, Yin (1994) argues that a case study approach is particularly suitable when:

i) seeking answers to 'how' or 'why' questions;
ii) the inquirer has little control over the events being studied;
iii) the focus of the study is a contemporary phenomenon occurring in a real-life context;
iv) the boundaries between the phenomenon and the context in which it occurs are not clear;
v) it is desirable to use multiple sources of evidence.

Yin argues that 'a major strength of case-study data collection is the opportunity to use many different sources of evidence' (Yin 1994: 91). The multiple sources of evidence are used to produce converging lines of inquiry, which lead to more convincing and accurate conclusions. However, this requirement to use multiple sources of evidence places heavy demands on the abilities and resources of the researcher: 'The case-study investigator must have a methodological versatility not necessarily required for using other strategies and must follow certain formal procedures to ensure quality control during the data collection process' (Yin 1994: 100).

The principal justification of case-study method lies in the differences between analytic generalisation and statistical generalisation (Hamel *et al.* 1993; Miles and Huberman 1994; Stake 1995; Yin 1994; 1998). In analytic generalisation, the 'case' (a study of a given phenomenon under a particular set of circumstances) is used as evidence to 'support, contest, refine, or elaborate a theory, model or concept' (Schwandt 1997: 2). Analytic generalisation can be contrasted with *statistical generalisation*, in which a case is described as a sample drawn from a population of cases (Vogt 1993). The sampling strategies used in statistical generalisation allow the characteristics of the population to be inferred from the characteristics of the sample. However, the priority in case-study research is to generate knowledge of the particular rather than the general - the purpose of the case is to understand issues relating to the case itself.

> A fatal flaw in doing case studies is to conceive of statistical generalisation as the method of generalising the results of the case. This is because cases are not 'sampling units' and should not be chosen for this reason. Rather, individual case studies are to be selected as a laboratory investigator selects the topic of a new experiment ... Under these circumstances, the method of generalisation is 'analytic generalisation, in which a previously developed theory is used as a template with which to compare the empirical results of the case study. If two or more cases are shown to support the same theory, replication may be claimed. The empirical results may be considered yet more potent if two or more cases support the same theory but do not support an equally plausible, rival theory (Yin 1994: 31).

Consequently, cases used for analytic generalisation should be purposefully sampled on the basis that they are expected to be fruitful in furthering our understanding of particular phenomena.

3.4.1 Case-Study Design

A primary decision in the design of any case-study methodology is whether to use a single- or multiple-case design. The relative merits of both approaches have been examined at length in the research literature. Single-case designs are considered to be particularly appropriate under any one of three sets of circumstances (Stake 1995; Yin 1994; 1998):

i) When the case represents the *critical case* in testing a well formulated theory. A well formulated theory, according to Yin (1994), is one which states a clear set of propositions and stipulates the conditions under which these propositions are true. Examination of a single case which meets all of these conditions can lead to the theory's propositions being confirmed, challenged or extended.

ii) The case represents an *extreme or unique case*. That is, one which is so rare that any opportunity to study it should be taken. Under such conditions a single case is worth documenting and analysing.

iii) The *revelatory case*. This situation exists when an investigator has an opportunity to observe and analyse a phenomenon previously inaccessible to scientific investigation. When opportunities arise to study a previously inaccessible, but prevalent phenomenon, a single-case study is justified on the basis of its revelatory nature.

However, the single-case design has two major potential sources of vulnerability. The first potential problem stems from the fact that a case may later be revealed to be something other than was initially thought. That is, in-depth analysis may reveal that the single case selected cannot be justified as being 'critical', 'extreme or unique' or, 'revelatory'. The second source of vulnerability results from circumstances where access for the collection of the case-study evidence is restricted to the point where the data collected is insufficient to answer the research questions. As a result, any single-case design requires substantial pilot investigation in order to reduce the possibility of misrepresentation and to ensure the access required to collect the case-study data. It is recommended that researchers should not to commit themselves to a single-case design until these concerns have been satisfied (Stake 1995; Yin 1994; 1998).

Two methodological approaches were therefore considered: (i) study a single union in depth; and (ii) examine and compare several different trade union organisations. The first approach would have been easier in terms of time and resources and enable the response of one union to be considered in substantial detail. However, the results would not have achieved the objective of the thesis, which was to examine how the Conservative legislation had impacted on the procedures, practices and behaviour of a variety of trade unions. A broad range of trade unions was therefore important both to ensure the results had analytic generalisability, and therefore validity, and to enable comparisons to be drawn, from which any significant differences could be identified.

3.4.2 Selecting the Case Studies

In selecting the case-study unions, a representative spread of trade unions was ensured by including unions with a variety of different backgrounds, characteristics and experiences. The seven unions identified were drawn from different industrial sectors, represented different occupational groups and were of different sizes. The case-study unions were:

Bakers, Food and Allied Workers Union (BFAWU)
Associated Society of Locomotive Engineers and Firemen (ASLEF)
Rail and Maritime Trade Union (RMT)
Transport and General Workers Union (TGWU)
Electrical, Electronic, Telecommunication and Plumbing Union (EETPU)
National Association of Teachers in Further and Higher Education (NATFHE)
Civil and Public Services Union (CPSA)

3.4.3 An introduction to the Case-Study Unions

Bakers, Food and Allied Workers Union (BFAWU)

The BFAWU is a small, closed industrial union, operating in an industry that has undergone substantial restructuring, in the form of changes in labour processes brought about by the decline of the plant bread sector and the increase in recruitment in other food sectors.

In respect of union government, the BFAWU is highly decentralised, with a left-wing leadership that has been in control since its election in 1979. Despite the restructuring and retrenchment in the large manufacturing establishments of the 1980s and 1990s, and the growth of small bakery outlets, the union is still factory-based with workplace branches (Food Worker 1994).

The union is organised into workplace branches, which have a significant degree of control over the collective bargaining process. Whilst national level decision-making is the responsibility of the NEC and the general secretary, there is extensive consultation with lower level committees, groups and branches. The BFAWU has since 1979 been regarded as one of the most democratic trade union organisations

(Blackwell 1990). The BFAWU has a long history and a proud record of individual members' balloting, stretching back to 1925. This stems from the BFAWU's inception from journeyman bakers, the postal system being the main avenue of contact for a mobile membership (Food Worker 1985).

Associated Society of Locomotive Engineers and Firemen (ASLEF)

ASLEF was selected because it is a small closed union, representing train drivers and operators in the privatised rail industry. It is also a union that has a history of holding secret ballots on certain key issues. Traditionally it has been regarded as a highly centralised union in which a moderate group dominates senior positions of governance (Bagwell 1963; McKillop 1950).

The union is run on traditional principles, which view the branch as the vehicle for democracy. Visits to branches revealed a set pattern of affairs, with a hard core of activists forming the nucleus of the branches. Circulars issued by head office to branches were detailed and informative. The branches are traditionally regionally based, but with few autonomous powers. The former British Rail negotiating machinery meant bargaining took place at national level, and in respect of ASLEF this placed the responsibility for bargaining firmly in the hands of national officials, rather than at local branch level. The branch is the forum for the membership to express their views on the way the union was operated and put forward proposals for reform, which would be communicated through the union hierarchy through an extensive network of committees.

Rail and Maritime Trade Union (RMT)

Formerly known as the National Union of Railwaymen (NUR) the traditional union structure was established in 1913. The supreme policy-making body of the union is the Annual General Meeting (AGM), comprising seventy-seven representatives, the president, and general secretary. The representatives of the AGM are elected by ballot on the single transferable vote system by the members of branches, grouped together in a locality, every three years. The general administration of the unions business during the intervals between the

AGM is carried on by an NEC consisting of the president, general secretary, and 24 representatives chosen by the members of the different districts (Hyman, Price and Terry 1988).

The RMT is a medium-sized open union representing workers from a diverse range of employment. The RMT has traditionally been recognised as having a highly centralised structure, and not one that accorded to the Conservative model. In respect to factions of government there is strong competition between the left and ultra-left groupings.

Transport and General Workers Union (TGWU)

The TGWU was founded in 1922 with the objective of creating one large, open and powerful general union. Throughout its history the TGWU has grown by mergers and recruitment. From 1965 to 1990, 32 small to medium-sized unions merged with the TGWU, bringing in 290,000 new members (TGWU publication 1996). As a result of mergers, membership peaked at 2 million; however, the hostile environment encountered by the union movement in the 1980s and 1990s witnessed a decline in the TGWU membership by more than half. Membership in 2003 stood at 880,000. The union's constitution has traditionally comprised two key parts: the geographical regions, responsible for general administration and policy, and the trade groups, responsible for bargaining matters. The NEC and general secretary have traditionally been responsible for implementing policy. Broad-left candidates have traditionally dominated the NEC (Undy 1985).

The TGWU system of government did not correspond with the individualistic Conservative approach. The union was regarded as bifurcated; that is to say, decentralised in the bargaining channel, but highly centralised in its administrative channel. In respect to union government, it has traditionally been regarded as operating a caucus system, in which a left-wing group has been in control of deciding policy and choosing leaders (Undy *et al.* 1996).

Electrical, Electronic, Telecommunication and Plumbing Union (EETPU)

The EETPU was the product of a merger of two unions, the ETU (electricians) and the PTU (plumbers). Before the merger of the ETU and PTU was officially agreed in 1968, important changes were made to ensure that both unions were 'democratic'. They ensured there could be no repeat of the abuses that led to the 1961 trial, at which communists within the ETU were found guilty of ballot- rigging (Undy *et al.*1996). (This is referred to in further detail in chapter 6). The union is an example of a large industrial union, with a strong craft tradition and a reputation for strong membership participation in decision-making (Forrester 1976). Traditionally moderate and right-wing parties compete strongly for control. Historically, the craftsmen membership held a disproportionate influence on policy-making and provided greater levels of participation than other sections within the union. It is also a union which the Conservatives held out as a model of democracy, being an example of a single-channel centralised union, and in that respect a complete contrast to the TGWU. On the 1st May 1993 the EETPU merged with the Amalgamated Engineering Union (AEU) to form the Amalgamated Engineering and Electrical Union (AEEU) (AEEU publication 1997).

National Association of Teachers in Further and Higher Education (NATFHE)

NATFHE was chosen because it is a medium-sized occupational trade union, with a history of strong left-wing political domination. The union has a long history of holding secret ballots on industrial action, so, in this limited respect only, accorded with the Conservative approach. NATFHE evolved from the Association of Teaching and Technical Institutions (ATTI), which was set up in 1903. In the 1940s the ATTI merged with the Association of Teaching and Training Colleges and NATFHE was launched (NATFHE 1986; Annual Report of the Certification Officer 1986). During the 1960s the union increased its membership base rapidly, because of the expansion of technical colleges and the creation of the Polytechnic sector. From the 1960s the membership of the union consisted of a strong left-wing group with allegiances to the Communist Party.

The union is now divided into two distinct divisions, one concerned with bargaining in the further-education sector and the other bargaining in the higher- education sector. Members belong to branches that are generally workplace-based. The branch

is regarded as the place in which members can raise concerns and ideas. The union has 14 regions: Anglia; East Midlands; Inner London; Outer London; South East; South West; Southern; West Midlands; Yorkshire; Humberside; North West, Wales; Scotland and Northern Ireland. Each has a regional council, to which branches send representatives. These elect delegates to the National Conference and to the Further Education and Higher Education Sector Conferences (NATFHE publication 2000)

Civil and Public Services Union (CPSA)

The CPSA was a medium-sized trade union representing administrative and junior grades within the Civil Service and many former nationalised industries. During the 1970s a three-way factional contest developed within the union, between the Moderates (embracing the Labour Party Right as well as those with no party alliance), the Labour Party Left (organised under the label of the broad left), and the Socialist left (Fosh *et al.* 1996). Traditionally the NEC was elected by annual conference; however, in 1979, as a consequence of a temporary alliance between the moderate group and the socialist left, the conference resolved to introduce individual member workplace ballots (Forester 1976).

Traditionally the CPSA was a highly centralised union, with the power held by the NEC and annual conference. The NEC was elected by branch block-vote. The general secretary and deputy general secretary enjoyed considerable discretion in the handling of day-to-day business. The union consisted of 16 sections and a network of branches.

The then CPSA was an example of a medium-sized, closed public-sector union. Traditionally the CPSA was regarded as maintaining a centralised bargaining structure and decentralised non-bargaining structure. The CPSA has a long reputation of internal factional organisation, with a rightward leaning group, a broad left group and a moderate faction. On the 10th March 1998 the CPSA merged with the Public Services Tax and Commerce Union (PSTCU), to form the Public and Commercial Services Union (PCS); hence the CPSA no longer exists (CO Annual Report 1998).

Another benefit of selecting these seven trade unions is that they have also been subject to some degree of analysis, in the major study carried out by Undy *et al.* into the impact of Conservative legislation on union elections and industrial action (discussed earlier in chapter 1). There is thus considerable merit in comparing the results of this study with those of Undy *et al.* (1996) in the areas of elections and industrial action. The research will build upon the Undy *et al.* 1996 study, providing further analytical insights into the impact of Conservative policy on the internal affairs of trade unions in the specific areas of elections and industrial action to which the Undy *et al.* (1996) study was confined. Further developments that have occurred in the respective trade unions since the Undy *et al.* (1996) analysis will be noted and the reasons behind such change determined.

Since the legislation is now more familiar to trade unions and unionists than at the time of the Undy *et al.* (1996) study, this will enable any incremental impact of the legislation on union affairs to be readily detected and will provide an original contribution to current knowledge. It is also appropriate to re-emphasise that the current research is also more extensive than that of Undy *et al.* (1996). This research considers not only the impact of legislation pertaining to secret ballots, but also the provisions granting the individual members the right to complain about the internal affairs of trade unions. This latter area was not touched upon in the Undy *et al.* (1996) study, and therefore this thesis will shine new light on a neglected area of the law.

Access to the case-study trade unions was procured by writing to the general secretary or deputy general secretary, requesting the union's participation in the research (see appendix 1). This correspondence resulted in the receipt of background information about the structure of the unions, the nature of their membership and union rule-books, and guidance on the organisational features of those trade unions pertaining to decision-making processes and opportunities for membership participation. It also led to the designation of a senior national official with responsibility for administrative or constitutional issues who provided general advice and guidance on the internal operation of each trade union.

A summary of the key characteristics of the case-study unions is contained in Table 3.4.

Table 3.4 A Summary of Key Information Pertaining to the Case Study Unions

Union	Sector Private/public		Coverage	Number of Members
TGWU	*	*	General	831,895
EETPU	*	*	Industrial	350,715
CPSA		*	White Collar	125,801
NATFHE		*	Professional	61,864
RMT	*		General	56,470
BFAWU	*		Industrial	28,052
ASLEF	*		Industrial	14,721

3.5 Data Collection Techniques

Researchers can deploy a variety of techniques for collecting empirical materials. These techniques range from interviews, through observational techniques such as participant observation and fieldwork, to archival research. The conclusion common amongst texts that examine the relative strengths and weaknesses of various data-collection techniques is that no single technique has any absolute advantage over the alternatives and that the data collected by employing alternative techniques are often complementary or synergistic in nature (Miles and Hubermann 1994; Guba and Lincoln 1994; Myers 1997). Data-collection techniques were used in this thesis on the basis of the extent to which they enabled the study to address the key research issues. The main techniques used for gathering data were interviews and documentary evidence.

a) Interviewing

As Fielding (1993) maintains, 'interviewing has a strong claim to being the most widely used method of research'. In this thesis the collation of the necessary data was carried out through the use of interviews with a sample of trade union officials and lay members. Different levels of union official were interviewed in order to obtain comprehensive and reliable data about the nature and reasons for changes to union constitutions. Interviews were carried out with the general secretary or deputy general secretary, members of the NEC, full-time and lay officials, national officials

(including area officials and officials representing industries on a national basis), shop stewards, branch lay officials, members and specialist officers involved in the rules revision process or the administration of financial affairs. The specialist officers were full-time and held various titles, depending on which union they represented, including: rule change officers, political officers, executive officers, legal officers and administrative officers.

Senior officials (including the general/deputy general secretary and NEC members), officers with specialist responsibility, national officials, lay branch officials and shop stewards provided pertinent data on the impact of the law on national level decision-making and valuable insights into the impact of industrial- action ballots. The broader membership provided general information about changes in methods of membership consultation and participation. Since the objective of the thesis was to investigate the impact of Conservative legislation on the internal affairs of trade unions, the decision was taken to interview predominately union officials rather than lay members, as union officials were in the best position to supply the relevant information due to their specialist knowledge on the subject. Interviews were semi-structured in format, comprised open-ended questions and covered the same set of issues at each trade union. The interview samples at each union are detailed in table 3.5.

Table 3.5 A Summary of Interviews Carried Out by Union

Union	General/ Deputy Secretary	Specialist Officers	NEC Members	National Officials	Shop Steward	Lay Branch Official	Members	**Total Per Union**
BFAWU	1	2	2	5	3	2	2	14
ASLEF	1	2	2	5	3	2	2	14
RMT	1	2	2	5	2	2	2	13
TGWU	1	2	2	5	2	2	2	13
EETPU	1	2	2	5	4	4	2	17
NATFHE	1	2	2	5	2	2	2	13
CPSA	1	2	2	5	2	2	2	13
Total number of interviews								**97**

The questions asked at interviews were designed to cover the four key areas targeted by the Conservative government legislation, namely: i) union elections; ii) political fund; iii) industrial action; iv) statutory rights of individual members. These aspects of legal regulation were directly linked to research issues 1, 2 and 3 respectively. Moving away from the specific content of the questions covered in the interviews, one issue that needs to be considered is that of 'pilot interviews'. Although most research-method texts view the 'pilot study' as an essential final step in the preparation process, Edwards *et al.* (1997: 84) observe that 'this step is frequently neglected, rushed, sloppily done, or performed in a ritualistic manner'.

In accordance with the conventional wisdom on pre-testing (see Sheatsley, 1983; Howe and Gaeddert, 1991), this stage was undertaken with a small group of national officials, shop stewards and members of the BFAWU. The 'pilot interviews' were carried out with seven interviewees. The interviewing revealed that some members had a problem with the way certain questions were posed to them. Members could not answer some of the questions, because they were unfamiliar with some of the policy and technical issues underlying them. This was in stark contrast to national officials, shop stewards and branch officials, who had no problem providing information since they had exposure to the issues; hence the decisions to frame some questions differently to members, and to omit certain questions that were not suitable for that particular audience. This resulted in two sets of interview protocol – one for union officials and one for members (see appendices 2 and 3). A minimum of thirteen and a maximum of seventeen interviews were carried out at each union. On average, fourteen interviews were conducted per case. Each person, irrespective of their position within the union, was interviewed once and for approximately one and a half-hours. Interviews were tape-recorded and transcribed verbatim.

In addition to the interviews with officials and members of trade unions, in-depth interviews were also carried out with four other key informants who had knowledge of the Conservative legislation and exposure to the internal affairs of trade unions.

The interviewees were:

a) Certification Officer

b) Commissioner for the Rights of Trade Union Members

c) Assistant Commissioner for the Rights of Trade Union Members

d) Deputy General Secretary of the Trades Union Congress

The four informants were interviewed once, for approximately one and a half hours. The interviews were semi-structured and asked open-ended questions. Although all the questions asked were directed to the respective propositions, some of the questions asked were not the same. This was because it was necessary to elicit specific information from the key informants as a result of the respective positions they held. (These questionnaires are in appendices 4 to 6.) This meant that the total number of interviews carried out and analysed for the purpose of the thesis was 101.

Personal interviews have several advantages: they enable the interviewer to explain any misunderstanding the respondent may have about the issue, and the researcher can probe vague or inappropriate responses. However, there are some disadvantages of personal interviews that a researcher must be mindful of, including the possibility of interviewer bias and the cost and time of the process. (Judd, Smith and Kidder 1991: 219)

b) <u>Documentary data</u>

There are various types of documents available which were drawn upon for purposes of this research. However, the material used was very much dictated by the research question being explored. There are four major classes of documents available to the researcher:

- public records (e.g. monthly digest of statistics, Hansard, finance and economic statistics).
- the media (e.g. newspapers, television).
- private papers (e.g. minutes of meetings, private memos of organisations, letters,)
- visual documents (e.g. photographs, paintings, sculpture).

The empirical research undertaken in this thesis involved reading and examining a variety of key documentary materials. The data analysed was extensive, and required reference to a large number of documentary and archive data, spread over an extended period of time. The data included union rule-books, conference proceedings, NEC minutes, strategy documents, union reviews, union magazines, journals, memorandums, workplace employment relations survey data, Green Papers, Hansard, legal decisions, law reports, decisions of officials, pleadings, affidavits and court orders.

There can however be a number of problems associated with using recorded information. Shipman (1973: 108) warns that:

> The distance between document and reality, and the number of interpretations involved have to be considered in interpreting documentary evidence.

Reliability of information may not be the only problem to contend with when collecting documentary evidence. Another major problem area can be the accessibility and format of the documentation (Stewart and Kamins, 1993). It may be difficult to locate the document(s), or access may be limited or restricted. The format of documents can be an obstacle when the manner in which it is structured and presented is not entirely compatible with the requirements of the research purposes.

In this research, the problems of access to information were not significant constraints. The legal information necessary was obtainable from law libraries and official bodies. Documents relating to individual trade unions were made freely available. Many hours of research time were spent analysing relevant documents at the individual trade unions, the TUC library based at the University of North London and the industrial relations records library at Warwick University. One major benefit of documentary sources is that they are not generally susceptible to being contaminated by the intervention of the researcher. As Shipman (1988: 113-14) comments:

> The advantage of documents as sources of evidence is that they have been compiled for other purposes than to provide information for social scientists or historians. They can be assumed to be a reflection of feelings undisturbed by the presence of the researcher.

Deznin (1979), Stake (1996) and Yin (1994), suggest that case-study reliability and validity can be improved by the triangulation of data, i.e., the use of multiple data sources which converge on the same set of facts or findings; constructing a case-study data base which contains raw data and is distinct from the final case-report; and constructing a chain of evidence which explicitly connects the research questions, the data collected and the conclusions drawn. Several forms of triangulation were applied to this thesis. Data were collected from multiple sources (people, times, places) and a variety of methods were used. The study builds primarily on the material obtained from interviews; however, it was also supported by trade union and external documentation, and information from CROTUM and the CO (the trade union regulators). The fieldwork was carried out between 1998 and 2003.

3.6 Data Analysis

The analysis of qualitative data such as that collected in this study is 'both the most difficult and the least codified part of the process' (Eisenhardt 1989: 539). Hart states that 'there is no one correct way of organising, analysing and interpreting qualitative data' (Hart 1991: 197). In this thesis the researcher chose to deploy an inductive approach to data analysis.

The inductive theory approach consists of a set of techniques for (1) identifying categories and concepts that emerge from text, and (2) linking the concepts into substantive and formal theories (Glaser and Strauss 1967; Strauss and Corbin 1990). Today, inductive theory is used across the social sciences to examine topics, for example, public health (Hitchcock and Wilson 1992; Yamamoto and Wallhagen 1998), social welfare (Lazzari *et al.* 1996), clinical and counselling psychology (Rennie 1994; Blustein *et al.* 1997), gerontology (Young 1998), business administration (Locke 1996; Fox-Wolfgramm *et al.* 1998), drug abuse (Morgan and Joe 1996) criminology (Ward *et al.* 1998).

The mechanics of the data analysis process were as follows. Within-case analysis was the first analysis technique used with each trade union under study. This involved studying each trade union's written documentation and interview response data as a separate case, to identify unique patterns within the data for that single organisation.

Detailed case-study write-ups for each trade union were then prepared, categorising interview questions and answers and examining the data for within-group similarities and differences. Cross-case analysis then followed. This involved examining pairs of cases, categorising the similarities and differences in each pair. The researcher then examined similar pairs for differences, and dissimilar pairs for similarities.

In respect to documentary evidence, problems of interpreting meaning from text were minimised by the detailed information provided and the fact that the researcher possessed the legal knowledge and legal skills necessary for the interpretation of the legal material. A rigorous academic approach to the phenomena of interest being studied required the application of legal research skills and methods. In particular, statutory interpretation, case-law analysis and the examination of legal arguments proved vital tools to apply to the study in order to understand the delicate nuances concerning the impact of the law on internal union affairs and the use of the law by the key actors. In order to facilitate the legal analysis, electronic legal tools were drawn upon. First, 'Lawtel' proved useful in analysing sections of a particular Act of Parliament. Second, 'Lexis Professional' facilitated the analysis of full-text legislation and many legal cases.

A variety of specific techniques were used in the process of evaluating and analysing the data, including placing information into categories, creating flow charts or other displays and tabulating the frequency of events. The quantitative data that was collected relating to the results of political fund ballots and the number of complaints made by trade union members to the CO and CROTUM corroborated and supported the qualitative data, which was most useful for understanding the rationale or theory underlying relationships.

When all the data sources had been converted to word-processing documents, the text was retrieved and studied to identify the findings for each of the key areas targeted by the Conservative legislation: i) secret ballots for the elections of senior officials, ii) political fund; iii) industrial action; iv) the right of individual union members to complain about trade union affairs. Any changes to the constitutions of trade unions were also recorded, together with the reason for change. The development and

refinement of analytical categories and the retrieving of data, are required in order to improve the relationship between the researcher and the data (Hammersley and Atkinson 1983; Pfaffenberger 1988; Durkin 1997). Maintaining strong links between the data and the context in which these occurred throughout the remainder of the research has the potential significantly to improve the reliability and validity of a study (Kirk and Miller 1986; Silverman 1993).

An analysis of the sequence of events leading to changes in the internal affairs of trade unions was undertaken, which enabled characteristic patterns to be found. This analysis resulted in the identification of similarities and differences amongst unions in respect to changes to their constitutions and the outcome of the modifications. Many of the insights discussed in the results section of this thesis are based on data gathered from the interviews and supporting documentation.

3.7 Conclusions

This chapter has sought to explain the general methodological approach and the specific research techniques adopted. In order to test the research issues, it was necessary to adopt a research methodology that enabled investigation of the structure and operation of the case-study unions prior to the introduction of Conservative individualistic approach to trade union government, and of the experiences of the case-study unions after the introduction of the Conservative template. This enabled identification of the extent to which union government changed to reflect the Conservative individualistic approach of democracy and the impact of these changes on union behaviour.

In the remaining five chapters, the research issues are investigated and the results outlined and discussed. Chapter 4 examines the extent to which Conservative balloting legislation pertaining to elections and the political fund caused changes to the constitutions of trade unions and their political complexion. Chapter 5 examines the impact of industrial-action ballots on the case-study unions. It considers whether legislative requirements restricted the unions from inflicting disruption on the external environment. Chapter 6 analyses Conservative attempts to change the internal

processes of trade unions by encouraging individual members to complain about trade union affairs.

In each of chapters 4, 5 and 6, data collected from the case-study unions are analysed. The length of each case analysis varies, because each union had different experiences. This is an important finding in itself, and one that is commented upon at relevant junctures. Chapter 7 provides an over-arching discussion of the findings. Chapter 8 concludes the thesis by considering the implications of the results of the fieldwork for trade unions, trade union democracy and government policy.

Chapter 4 - Trade Union Elections and Political Fund Ballots

4.1 Introduction

This chapter provides an analysis of the developments that have taken place within the case-study unions in response to the Conservative balloting legislation pertaining to elections and political activities. The legislation sought to increase the influence of the individual member in these areas. It was believed that traditional methods of trade union decision-making restricted membership participation and enabled the average member to be intimidated by activists. The average member was assumed to be more moderate and desirous of being enfranchised. In this respect, the chapter traces particular developments relating to research question 1, namely, whether the balloting requirements pertaining to elections and political activities resulted in changes to the internal affairs of trade unions.

Drawing on the results of interviews with trade union officials and members, the chapter will explore any changes made to union rule-books concerning elections of union officials and political funds.

4.2 Trade Union Elections

In the **BFAWU,** the requirement to elect every voting member of the NEC by secret postal or workplace ballot was met with considerable hostility. The following quotes illustrate the views of different levels of official. One national official stated:

> The traditional rules for electing senior officials dated from the inception of the BFAWU from journeyman bakers. The intrusion of the law into our rule-book in this way was an outrage.

A shop steward similarly observed:

> The law has no right involving itself in such matters. I thought the union belonged to the members not politicians. The rules on elections of officials should be determined by the union itself through the rule book, not imposed by law.

Traditionally, representatives attending the annual conference had elected the NEC. Delegates at conference were elected by the individual votes of members at branches. Compliance with the law would have meant significant change to BFAWU practice. The general secretary of the union led strong resistance to change, stating: 'the union should ignore the legislation and elect the executive in accordance with the rule-book'. The union determined to retain its original rule, and the rule-book provides:

> The NEC will be elected at Conference. One member from each district shall be elected from conference delegates, who together with the president and secretary shall administer the affairs of the union. In addition one female member will be elected to represent the female membership. The NEC so elected shall hold office for 2 years.

The BFAWU also resolved to adopt a policy of non-compliance with the election provisions of the EA 1988. The position of general secretary would not be elected by secret postal ballot. Rule 20.94 (c) of the 1997 rule-book states:

> The general secretary who is elected by conference shall be a permanent official so long as he continues to give satisfaction to the majority of the membership.

Three years prior to the introduction of the EA 1988 the BFAWU conference of 1985 debated whether or not the general secretary should be elected every five years. It decided overwhelmingly against such a change to the rule-book. The majority view of members interviewed in the course of this research was that 'the general secretary could under the existing rules of the union be removed from office at the will of the membership', irrespective of the new legal provisions.

Several members emphasised that the BFAWU electoral policy is based on the 'philosophy of seeking the widest participation of the potential electorate for a particular office'. This is because under the BFAWU constitution the national officials are accountable to the members, since they are elected by the membership. The NEC, on the other hand, is accountable to the supreme policy-making body of the union. This is the annual conference; therefore, the NEC is elected by that body. The retention of this policy has therefore flown in the face of the legislative initiatives. One national official expressed the view that:

> The BFAWU took a firm and robust stance. Its constitution was to be determined by members and officials. It would not be told how to run its internal affairs by the state. State regulation in this area was against established practice.

To date the BFAWU has not been challenged on its failure to comply with the legislative requirement of electing senior officials. The widespread support amongst the membership for the BFAWU system of government is historical and stems back to internal unrest that arose in the union during the 1960s and 1970s, when a right-wing oligarchy emerged. One national official explained:

> The moderate union leadership became more concerned with pursuing their own interests, which were divergent, and less radical than those of the membership. Throughout, the opposition sought to constrain leadership behaviour by constitutional means, in particular by establishing specific objectives for negotiators and clear policy at annual conference.

The response of the national leadership was, in the opinion of the opposition, calculated to undermine conference authority. Resolutions were disregarded and, most controversial of all, the leadership accepted employers' pay offers which fell short of the terms established by conference. This was without reference to the views of conference, branches or the general membership. The events generated a climate of discontent, which is illustrated by the following comments of shop stewards:

> Democratic processes have been replaced by a dictatorship of bureaucrats and a conspiracy of silence. (Conference Proceedings 1975: 42)
>
> The leadership attempted to maintain tight control on the agenda at conferences, run contentious issues out of time, and ensure few resolutions were overturned. The leadership demonstrated contempt for the views of opponents. (Food Worker 1978: 53)

The events led to the emergence of a strong informal opposition to challenge the then leadership. After a period of bitter infighting, the current general secretary, Joe Marino, a declared oppositionist to the incumbent administration, was elected in 1979. The change of administration led to a transformation in union government, with wider membership participation in union decision-making and greater autonomy for branches and shop stewards (Annual Conference Report 1979: 127-44). To this end, the leadership introduced a variety of changes to make the union more democratic. In particular, union branches set up focus groups specifically created to receive union members' opinions on union policy, practices and procedures. These views were then sent to a district board that channelled the information up the union structure. The union also engaged in opinion polling and qualitative research of its members. There were two further rule changes, relating to the election of the NEC, that were passed at the 1994 annual conference, and which are relevant to the issue of democracy (Food Worker 1994: 71). The first change allowed each branch to elect one additional member from the conference delegates. This change was part of the ongoing process of increasing democracy within the organisation, aimed at giving branches more power and representation. The second change introduced a requirement that at least one woman must be elected from each branch. During the 1990s the leadership made a commitment to improve the representation and proportion of women members throughout the union. As a result of the changes introduced from 1980 onwards and the participative style of leadership adopted by Marino, the BFAWU has taken on a settled appearance. The membership is clearly comfortable with the way the organisation functions, and the services that it offers. One reason why the BFAWU

has been able to defy the law in respect of union elections and remain unchallenged is that the 1980s and 1990s have not witnessed the development of factions to challenge the existing leadership, as happened in the 1970s. It has been remarked that:

> In the BFAWU the prolonged and sometimes bitter disputes of the 1970s did not lead to the emergence of any permanent factions and the new leadership secured an unchallenged ascendancy. (Blackwell 1990)

The BFAWU leadership under Marino has been committed to ensuring that such conflict would not occur again, and the political control of the union has remained firmly with the left.

Interviews with **ASLEF** officials and an analysis of documentary materials revealed that this union was uncertain as to precisely what its response should be to the TUA 1984. As the union rule-change officer explained:

> The union was unclear as to whether it wanted to work inside the law or outside the law, ignoring the law as though it was not there.

Some union officials and members believed that the union should comply with the legislation, while others wanted the union to ignore it and retain its traditional rules, as prescribed in the rule-book, and risk the threat of legal action. Several debates were held on the balloting provisions before a final policy was adopted. The following quotations encapsulate the mood of the union at this juncture in 1985:

> Soon we will have to come to a decision on how your NEC is to be elected. We can choose to carry on in the same old way. But if we do that and we do not carry out the procedures laid down in the Act, it will need only one man to complain that he has not been given the right to vote for his NEC member and he can take action against the union. What will happen then? The High Court will become involved in our elections and once that happens we are in trouble. We cannot pretend the law is not there, we cannot do that at all, because that is flying in the face of danger. (President of the Executive Committee, Conference Proceedings, June 1985)

> The Annual Delegates Conference (ADC) should instruct the NEC to defy the provisions of the TUA 1984 in relation to holding secret ballots for the election of officers. (Cockerhill, Conference Speaker, June 1985)

As one shop steward explained:

> ASLEF regarded the government's use of compulsion on trade unions as an unreasonable interference in the affairs of a private organisation and initially took the decision that existing structures should be retained and the legislation resisted.

Following the introduction of the new legal provisions, two events occurred which forced the union to review policy. Firstly, the then NUR, the TGWU and the then

NUPE were all subjected to legal action for failing to conduct elections in accordance with the provisions of the TUA 1984. Secondly, ASLEF received a threat from dissident members that they 'would take legal action against the union if they did not comply with the law'. The executive took the view 'that the policy of resisting the legislation presented too great a risk of the union becoming embroiled in a legal dispute.' The view of ASLEF's leadership at this juncture is illustrated in the following statement, made by the then general secretary.

> Let us examine the position of those unions whose rules or constitutions already lay down that they have ballots, and let us look at their success as compared with the position in those who have been subject to complaint about their election procedures. Ignoring the law is futile. Failure to abide by the law will result in legal challenges that will cost the union money it cannot afford to lose. (General Secretary, Annual Conference 1986)

As a result of the above it was determined at the rules revision conference in 1986 that ASLEF, in line with the TUA 1984, would hold future elections by the individual work- place-ballot method. However, as the rule-change officer explained:

> In a move to placate those against such a policy (including a strong left group) no rule changes were formally completed and entered in the rule-book, since it was anticipated that the Labour Party would succeed at the 1987 general election and would amend the law, once installed in government.

Following the re-election of the Conservatives in 1987, the ASLEF rule-change officer said that 'the executive decided that it had no alternative but to make the requisite changes to its rule-book'. The direct election of the NEC caused a significant change to the ASLEF constitution. Previously the NEC had been elected by the branch block-vote system every three years. As one shop steward observed:

> The ASLEF branch block-vote system was regarded by traditionalists as one of the most democratic methods of electing an NEC in the country. A debate was held at a branch meeting about who the candidate should be, and if any branch member disagreed with that he was entitled to an individual vote. The law took this away from us.

Rule 10 of the union now states:

> Elections will be conducted in accordance with any relevant statutory obligations and at such times as the NEC may determine in accordance with the Society's rules.

The requirement to elect the position of general secretary by ballot of the membership every five years also caused a change of the ASLEF rule-book; previously, the holder of the position had been elected by branch block-vote and served until retirement. The introduction of elections for senior officials also gave rise to a debate about

extending the system of elections to national officials. This was rejected by the leadership, on the grounds of cost and efficiency (Annual Conference Minutes 1987).

On the introduction of compulsory postal balloting for the election of senior officials in 1988, ASLEF experienced a significant decline in voter turn-out. Most officials put this down to the new balloting procedure encouraging member apathy. As one national official explained:

> Workplace ballots were preferable to postal ballots since these enabled shop stewards to encourage members to vote. Many members simply will not vote on issues such as the election of senior officials unless put under real pressure to do so. They just don't seem interested.

The view expressed above by national officials was confirmed in interviews with union members. Whilst members were interested in union issues relevant to their working life, many demonstrated a lack of interest in the issue of union elections and administration.

Whilst the introduction of ballots for the election of senior officials caused changes to the constitution of the union, it has not resulted in the election of moderate candidates. From 1995 onwards the union experienced a significant shift in the political control of the union. Representatives of Militant, the Socialist Alliance, Socialist Worker's Party and the Socialist Labour Party campaigned strongly on behalf of their candidates, gaining control of other influential committees within the union not subject to election. Such committees play a pivotal role in briefing the NEC and general secretary on grass-roots opinion and by providing direct information and advice. In 1997 the Socialist Labour Party candidate was elected general secretary. The recognised left group also held the majority of seats on the NEC. However, the unpredictable nature of membership voting surfaced in the general secretary elections held in July 2003. The election resulted in the shock defeat of left-winger Mick Rix. Whilst those who support moderate trade unionism might take delight in the defeat of Mr Rix, they are unlikely to be showing overt support for his successor Mr Brady. The new general secretary is recognised to be a right-winger, who has been accused of having links with the British National Party and who has also been tainted by allegations that he has subjected female trade unionists to sexual discrimination (Clement 2003). The right, however, has won only a partial victory. It is the NEC,

carrying out the agreed policy of the union, that runs ASLEF. The general secretary works under NEC instructions. Since the NEC is currently dominated by candidates drawn from left-wing groups within the union, the new general secretary faces some challenging times ahead. The battle lines between the left-wing groups and right-wing groups have been drawn (Weekly Worker 2003).

The response of the **RMT** to Conservative legislation mirrored the approach taken by the then NUR. The then NUR reaction to the TUA 1984 was one of wilful disobedience. In the first elections held after the passing of the statute, the then NUR decided to run the elections in accordance with its rule-book. The union rules provided that the NEC was elected by the block-vote system within industries and geographical constituencies. Members served a 3- year term. The decision to resist the implementation of the TUA 1984 resulted in 46 challenges, and the union was forced to re-run the elections. As one national official explained:

> From this point while opposing what they described as politically motivated interference in internal trade union affairs the union decided it was not sensible to defy the law. It complied with the legal provisions on the conduct of elections, selection of candidates and balloting constituency. The law consigned our freely determined rules contained in the rule-book to history.

The RMT also complied with the changes to electoral practice introduced by the EA 1988, adopting postal ballots for elections of the NEC president and general secretary every five years. Traditionally, the general secretary had been elected by the whole membership using the single transferable vote system. The term of office was at the will of the membership, usually until retirement.

The change advanced by the EA 1988 was not introduced immediately by the NUR. It waited until merger with the NUS was complete, resulting in the formation of the RMT. The union also altered the method of selecting members to the Annual General Meeting (AGM - the body responsible for determining union policy). This was a direct result of the TUA 1984. The Act required elections to the body in the union that exercised executive functions. In the event of a dispute as to which of two union bodies should be designated the executive, the CO can investigate and determine which body constitutes the real NEC. The union's administrative officer with responsibility for constitutional rules explained that, as a result of discussions between the RMT and the CO in 1987:

> The RMT concluded that the powers and the role of the AGM could be construed as the NEC. Rather than redefining the role of the AGM it was decided that the members should be elected annually by a secret ballot.

This key constitutional reform enabled the union to retain its traditional administrative structure at the highest level. The AGM remained the engine force behind union policy. Recognised left-wing officials have proved instrumental in retaining exclusive control over this body. The general administration of union business remained in the hands of the NEC. The general secretary remained responsible for the day-to-day leadership of the union and for overseeing the implementation of policy set by the AGM. The RMT political officer commented:

> Since the introduction of secret postal ballots for election to the AGM the seats have been retained by recognised socialist candidates. However, since the introduction of postal ballots participation in elections has declined markedly. Apathetic members simply cannot be bothered to vote, despite union reminders of the importance of so doing.

Gaining election to the AGM has enabled activists belonging to Militant and the Socialist Labour Party to obtain significant influence over union affairs. In this respect, constitutional reform has frustrated the intentions of Conservative legislation, which was intended to reduce the influence of such 'left-dominated committees' at the upper level of union government. In NEC elections, members of the Labour Party and Socialist Labour Party were the candidates who secured the majority of seats. Members of the groups also developed a stronger profile through elections at all levels within the union. The election of Bob Crowe, a recognised socialist, as general secretary to replace the late Jimmy Knapp in 2002 seems to confirm this.

Finally, the RMT is an example of one trade union that has extended the system of direct elections to lower level officials. However, the union stressed that this decision was not influenced by the legislation but by a wider debate within the union about democratic reform (Executive Committee Minutes 1992).

The initial reaction of the **TGWU** to the TUA 1984 election provisions was that they 'constituted a major imposition that should be resisted' (NEC minutes, November 1985). In the NEC elections held immediately after the introduction of the TUA 1984, the union resolved to ignore the legislation. Elections were held according to the union rule-book. The constitution provided for the election of the NEC from the geographical regions and trade groups. The method of voting could be by either a

show of hands or secret ballot. The decision to disregard the legislation resulted in 36 complaints being made to the CO, and after discussions with the CO regarding the legal position the election was re-run. One national official explained:

> From this point onwards the TGWU leadership decided to comply with legislation relating to internal union governance. As the legislation was passed stage by stage throughout the 1980s and 1990s the union decided at each step to change its constitution in accordance with the legal requirements.

The decision to introduce direct elections for membership of the NEC represented a substantial change to the constitution of the TGWU. A national official commented:

> Candidates needed to be more political in their approach, becoming well known to the wider electorate and developing campaign strategies. It caused the abolition of the trade groups electing their representatives to the executive through subordinate committees. This reduced the direct role of the activists within this area to ensure the election of their preferred candidates.

In the first elections held according to TUA 1984, candidates previously elected through indirect elections were returned. The election of the NEC by the membership provided it with a new source of authority and legitimacy. It obtained some degree of supremacy over the general secretary. In the words of one national official:

> The NEC took on the role of selecting the deputy general secretary and executive officer, which had formerly been in the gift of the general secretary.

Since balloting was introduced, the broad left has gained the majority of seats on the NEC. The political officer explained:

> This success can be attributed to its superior organisation and strength within the major trade groups. They had a nationwide channel of communication with the union's workplace branches, the crucial agency in electoral mobilisation.

The introduction of the EA 1988 resulted in the position of general secretary being elected every five years by a secret postal ballot of the membership. Traditionally, the TGWU elected the general secretary by individual votes at branch, workplace or by post. The legal reform resulted in a change of rule and practice. The TGWU rule-book had provided that the general secretary held office until retirement, subject to dismissal by the union. Thus, under the union rules the general secretary would not have been subject to challenge. The abolition of workplace ballots reduced the direct influence that TGWU branches and shop stewards could have in selecting senior officials, and electoral participation declined. The turn-out in elections for the NEC by workplace ballot in 1987 was 34 per cent, whereas the turn-out using the postal

ballot in 1991 was 15 per cent. The turn-out in the TGWU general secretary election of 1984 using the workplace ballot was 34 per cent whereas in 1991 only 22 per cent of members participated in the postal vote. The periodic election of the general secretary gave the position a new source of authority, enabling the office holder to exert greater authority over the NEC. One national official observed:

> The legislation transferred the decision-making power on key issues from lay activists and gave it to the members through the secret ballot. The legislation centralised power into the hands of the general secretary, undermining the extensive power previously held by conference, decisions of regional committees and branches.

However, since the legislation only covers elections to the NEC, activists, factions and groups have been able to retain influence. This has been achieved not only through the campaigning process, but also by gaining membership of other bodies, subordinate to the NEC, that are not covered by the law. Candidates affiliated to the Labour Party have remained in strong control of these committees. These committees can influence the executive by providing technical and factual advice and information. The political officer of the union observed:

> Members of other bodies can give the executive supporting advice and can attend occasionally to speak and participate in executive meetings, provided they do not become involved in decision-making. Although the legislation forces the union to have ballots for union elections trade unions can use old procedures to demonstrate that the union supports a particular candidate. Factions can mobilise support for their candidates.

However, factional activity challenging the leadership has been virtually non-existent due to the strong support for Bill Morris and the objectives being pursued. A shift in the axis of control within the union is evident from the election held in 2003 to find a successor for the retiring Bill Morris. A left-wing candidate, Tony Woodley, beat the moderate candidate affiliated to the Labour Party and officially endorsed by Prime Minister Tony Blair (with links to the socialist movement).

The **EETPU** was virtually untouched by the TUA 1984 since it already complied with its principal provisions. The EETPU had a long- standing practice of holding secret postal ballots on a range of constitutional matters, including the election of officials, major rule changes and important political decisions. The Conservatives held out the electoral and decision-making processes of the EETPU as an example of good practice, justifying their reforms. It has been remarked that:

> The Conservatives used as a legislative model the practices of approved British Unions particularly the politically moderate EETPU and AUEW (Undy *et al.* 1996: 75).

The long-standing tradition of using individual-member ballots in the government of the EETPU can be explained and traced by reference to the history and traditions of the union. Historically, the EETPU reflected the ethos of craft unionism, with the membership determining the union structure and demanding to influence decision-making through the use of workplace ballots. The EETPU adopted the use of secret postal ballots for elections under the leadership of Frank Chapple in 1960. This followed the expulsion of the communist caucus who had occupied senior executive officer positions and been involved in electoral fraud. This was a landmark event for the union. The then leadership of the union reformed the union's constitution, centralising authority in a professional executive elected by postal ballot. However, although the EETPU used secret ballots for the election of senior officials within the union, national officials were appointed. Following the introduction of Conservative balloting legislation in 1984, a debate ensued about whether such ballots should be extended to national officials. This proposal was firmly opposed by the leadership, and rejected at the EETPU annual conference in 1990. The union administrative officer noted: 'this allows the executive to appoint officers on the basis of particular skills they can bring to the job'.

The introduction of postal ballots by Conservative legislation in 1988 produced an increase in turn-out from 10 per cent to 30 per cent in the elections for senior officials. However, this was not the cause of the shift in political leadership in a moderate direction. This change would have occurred under the previous system of individual-member branch ballot if electoral fraud had not been perpetrated (Undy *et al.* 1996: 175). The de-legitimisation of the left as a result of the ballot-rigging episode, together with the strength of the right faction, ensured the continued marginalisation of the left. However, although the right faction has dominated senior levels of union government, the left-wing faction is strong within some industrial branches. One shop steward commented:

> It is some considerable time since the left scored a significant victory within the election of senior officials, however there is an active network at local level.

A lay member with strong links with the left commented:

> **Whilst it has to be admitted that the left is not a strong influence in the upper levels of governance in this union, the left is simmering away beneath the surface waiting for the tide to change.**

The above views would seem vindicated in the defeat of Sir Ken Jackson in the AEEU election for the position of general secretary by Derek Simpson, a Socialist Alliance candidate, in July 2002 (Hyland 2002). It has been suggested that Sir Ken Jackson's defeat occurred in exceptional circumstances (Guardian 6th October 2002). Following the creation of the AEEU, the membership experienced further centralization of decision-making and the systematic jettisoning of democratic traditions. For example, district and regional officials previously elected by the membership in the EETPU became appointed officials in the new union. These developments caused Jackson to become unpopular with his own supporters. Furthermore, Sir Ken Jackson had been about to retire but was persuaded to seek a further term as general secretary of the AEEU by, amongst others, Labour government representatives (Waddington 2003: 339). New Labour assisted Sir Ken Jackson throughout the election campaign (Financial Times, 17th July 2002; The Guardian, 19th July 2002). Sir Ken Jackson's proximity to the government meant he was 'contaminated' by Blair, enhancing his unpopularity amongst the rank-and-file membership (Waddington 2003: 339). This meant the general secretary election became dominated by personality as much as politics. The right's candidate was challenged because many-rank-and-file members who might otherwise have supported the right wanted anyone but him.

The imposition of secret postal ballots for NEC elections by the EA 1988 did not affect the EETPU. It already operated this system. The only provision that prompted a modification of the EEPTU rule-book was the more obscure provision, contained in the EA 1988 giving candidates the right to issue election addresses. The EETPU executive abandoned its power to supervise the content of election addresses.

The EETPU attitude towards balloting is encapsulated in the following statements made by shop stewards.

> **The balloting requirements did democratise unions. It gave the individual union member a right to decide change. Some traditionalists did not like this as it gave the individual union members a choice of how to act. (Shop Steward)**

> Balloting was justified because in large unions such as the TGWU branch attendance was in terminal decline; therefore voting had to be taken to the members, as members no longer came to the branches. (Shop Steward)

> Secret ballots are an essential element in any democratic system of government. However, I think a system of exclusively postal ballots is detrimental, since all the evidence to date shows it results in lower turn-out. Particularly in the case of union elections, where members sometimes see no point in voting because they often have little knowledge of the candidates, or really care for that matter. (Shop Steward)

The right-led group became the dominant political force within the EETPU during the 1960s, and this remained the case through the 1980s and 1990s. However, as referred to above, the EETPU has become part of a larger union, the AEEU, and this has seen the election of a left-wing general secretary.

When the TUA 1984 was introduced, the **NATFHE** left-wing leadership resolved to retain the traditional constitution of the union. A national official stated:

> The view of the leadership was that the law constituted a politically motivated and anti-trade union initiative that should be resisted. Unfortunately resistance proved impossible for NATFHE, due to a combination of both legal and internal political factors.

The intervention of the law into the internal affairs of trade unions procured changes in NATFHE that were extremely pronounced. Traditionally, the NATFHE rule-book provided that the members of branches elected delegates to represent them in the regions. The Political Officer stated that 'the regions were highly political bodies dominated by a communist group for ten years'. As one NEC member emphasised:

> In order to gain election to the regional body the members had to be recognised as extremely politically active.

The regions then elected 300 conference delegates and 80 national council delegates. During the 1970s and early 1980s, the reality was that unless you were a member of the broad left or the Communist Party, there was no chance of being elected to either body. The national council then elected the NEC and appointed officials. The NEC appointed the general secretary who served until retirement. As one shop steward noted:

> This structure of governance ensured that the left-wing machine was in power up until the 1980s. At this juncture the left lost the inspirational leadership of Driver (who retired) and Boardbridge (who died).

When the election of the NEC by the wider membership was required, the left sought to retain their influence. They proposed a new structure, whereby members would

elect representatives to the national council. The national council would then appoint members to the executive and select officers. However, one national official explained how:

> A member acknowledged as a right-winger challenged this move, complaining to the CO that the union was not acting in accordance with the legal requirements.

The legal advice received by the union and the declaration of the CO was that the proposal of the union fell outside the legal requirements. The law required that senior officials be directly elected by the membership. From this point onwards the union decided that it had no option but to comply fully with the legislation on internal trade union reform.

The union complied with the EA 1988, resulting in the introduction of postal ballots for the election of the executive and the general secretary (who had previously been appointed). One NEC member described the impact of the legal forays into the internal affairs of the union in the following terms:

> The result was that the law rendered the traditional union structure inoperative and drove a coach and horses through the traditional decision-making process.

The abolition of the election of the executive by the national council was a significant change. At a stroke it disenfranchised a body elected by the union's regional councils, which met four times a year and acted as an important forum for lay activists. An alternative right-wing faction started to emerge and take on the broad left. The law was one factor that completely reoriented the structure and political focus of the union. One national official observed:

> The 1980s represented a watershed for the old system. The internal political changes coincided with the legal changes, which changed the political complexion of the union.

A branch official expressed developments in the following terms during an interview:

> Balloting was one important factor which caused the changing of the whole political system of the union. The balloting process enabled the liberals to develop as a force within the union.

The legal changes were pivotal in making NATFHE more factionalised. They gave the moderate group a platform on which to campaign that they would never have had otherwise. A combination of the law and the internal politics within the union caused significant political change within NATFHE. Since the introduction of the requirement to elect its general secretary every five years, the sitting general secretary

has been defeated on two occasions. In both cases the defeats can be partly explained by the incumbent's identification with specific issues. As one official explained:

> The membership identified Dawson with policy failures connected with further education negotiations. In the case of Wolf, it was his confrontational approach with employers which made members uncomfortable.

Another official stated:

> Wolf's position was further complicated by the fact that when he stood against Dawson he described himself as a moderate in his election address. This caused considerable tension between himself and the liberals since he was in fact a member of a far left group.

This resulted in a politically tense period, with the battleground drawn between the left-wing members of the NEC and the general secretary on one side and the liberals on the other. The liberals took every opportunity to present Wolf as a left-wing militant who was acting in his own political interest rather than those of the membership. Ultimately, Wolf's handling of negotiations with the employers and the political claims made against him resulted in a loss of credibility to the left and the downfall of Wolf himself.

In 1994 John Acker succeeded Wolf. However, Acker had three acrimonious years in office. Acker was often accused of incompetence by officers, which resulted in him leaving the union by mutual consent. Following his resignation in 1997 another election was held and the moderate Paul Mackney elected. Currently no NATFHE general secretary has managed to secure two successive periods in office.

Finally, there is the **CPSA.** The CPSA was notable in the 1960s for using a 'show of hands at branch' as the method for electing the NEC. Delegates to annual conference voted for the president and vice-president. The general secretary was appointed and served until retirement. Significant changes in the political complexion of the union occurred in the late 1970s and early 1980, with the emergence of a moderate leadership. This resulted in changes to electoral procedures contained in the rule-book, with the NEC being elected by regional councillors' votes. One national official explained:

> The broad left became embroiled in internecine disputes between left-wingers, Militant members and members of the Socialist Workers' Party.

This ultimately resulted in the disintegration of the broad left, which in turn resulted in the less radical members of the broad left creating an alliance with the moderates. This moderate group obtained the majority of seats on the NEC, and the original broad left lost its power base. This moderate grouping then introduced several constitutional changes in advance of Conservative legislation. This resulted in the use of workplace ballots for the election of the NEC on an annual basis and the general secretary and deputy general secretary every five years. However, the 1986 CPSA elections for general secretary and treasurer needed to be re-run after the Electoral Reform Society found evidence of various electoral irregularities. The Conservatives used this as an example of malpractice, which justified the move to postal ballots (Trade Unions and Their Members, para 5.8, 1987, HMSO).

In 1989, following the introduction of the EA 1988, the union introduced secret postal ballots for the election of the NEC and general secretary. One national official noted:

> I think now that nobody would go back to other means of election for any post, but there were some sectors of the membership who preferred the conference block-vote and also the non-secret ballot rather than the postal ballot.

Another national official observed:

> The introduction of secret ballots for the election of these senior officers enhanced their positions considerably. It provided them with an electoral mandate of five years, four years longer than the NEC members.

Senior officials were now more frequently considered to be leaders of the organisation than their servants. As one national official observed:

> The election of the general secretary has really bolstered the importance of the office. Many take on the comparable role of the Chief Executive in a commercial organisation. This is possibly most marked in the case of Bill Morris in the TGWU. He has earned enormous respect from the membership and developed a significant power base.

An analysis of voter turn-out in CPSA, NEC and senior officer elections during the 1980s and 1990s reveals some interesting results concerning membership participation (Heery and Fosh 2000). During the period the union operated three different voting systems. Between 1980 and 1983 ballot papers were distributed to members at branch meetings. The votes were counted by branch officers, and results within the branch communicated to staff at the union's head office. Under these arrangements, the mean level of voter turn-out was 34 per cent. This figure increased

to 42 per cent over the next four years, when the voting system was altered and the union adopted a centralised system for counting members' votes. However, following the introduction of fully postal balloting in 1989, voter turn-out decreased to around 30 per cent.

The introduction of postal ballots helped the right by widening the electorate at a time when the broad left was successfully concentrating its activities in a few medium and high polling branches. As the political officer emphasised:

> The left was actually built around a comparatively small number of key branches, which was not an efficient vehicle for mobilising its electorate in a different voting environment and in a union with a three-way factional system.

The 1990s witnessed the emergence of a dominant right-wing majority on the NEC. This resulted in changes to the governance of the organisation, the stated aims of which were 'to ensure the union complied fully with the legal requirements on balloting and also to introduce more transparency and democracy into the processes and institutions of the union' (Political Officer, Annual Conference 1992). The CPSA executive was attempting to redraw the rule-book, in which the power of conference was reduced and the power of the membership increased.

The proposal was that Conference was to be held every two years and elections to the executive every two years. The membership would be consulted on issues where the executive disagreed with conference. The left-wing activists, who had historically controlled the political activities of the union, fought this change very hard. Traditionally, the activists had controlled the resolutions that went to conference and the resolutions that were passed. The right-wing faction were attempting to change the decision-making processes by taking decision making away from left-wing activists and giving the decision-making powers to the rank-and-file members. In this respect, the CPSA has moved from a system of representative democracy to one more akin to direct democracy. However, the executive also used the referendum of members to bypass intermediary bodies. The executive had much greater discretion on the implementation of policies as a consequence. The number of branches was reduced, for financial reasons, and the centre exerted greater control over branch activities. These changes have resulted in a much more centralised system of union government than was previously the case.

The 1997 conference of the union had passed a series of resolutions overturning key elements in the new rule-book. However, the executive put the issues to the members, who supported the executive rather than conference. It was accepted that during the merger process and the redrafting of the rule-book the union had contravened its own rules. However, the dissident activists decided not to pursue a legal challenge, on the advice of both lawyers and the CO. The activists were informed that they had less than a 50 per cent chance of success in any legal action, since the majority of members had spoken and supported the executive in a secret ballot. Some left-wing dissidents who were opposed to both the changes in union governance and the merger complained that the merger ballot had infringed legal requirements. The Employment Appeal Tribunal held that the union had fulfilled its legal obligations in respect of the ballot (EAT/25/98). The activity in the CPSA provides an example of a retreat from a union controlled by delegate branches and conference to one where the control is with the executive via the membership. However, it should be noted that in the newly formed PCS general secretary elections held in November 2000 the left stunned the moderates by having their candidate elected; the unpredictability and disruptive voting behaviour of members being thus demonstrated again, the ballot coming soon after a decisive 'no vote' on the political fund (see section 4.3).

4.2.1 A Summary of Changes to Election Procedures

In respect of election procedures that pre-dated the legislation, an analysis of the constitutions of the case-study unions reveals that the rule-book prescribed the mechanism to be used for the election of the NEC, the general secretary and other full-time officials and that the methods and procedures adopted by a union was a product of its history and characteristics. Hence, a rich diversity could be found amongst the different case-study-unions (see table 4.1).

Table 4.1 Methods of Electing the Executive and General Secretary in the Case-Study Unions Prior to the Introduction of Conservative Legislation

UNION	EXECUTIVE ELECTIONS	GENERAL SECRETARY ELECTIONS
BFAWU	Elected by delegates to the annual conference every 2 years.	Appointed once by the national executive; served until retirement.
ASLEF	Branch block-vote every 3 years.	Branch block-vote; served until retirement.
RMT	Branch block-vote every 3 years.	Ballot of the membership at branch or workplace; served until retirement.
T&G	Elected by representatives from the geographical regions and trade groups every 2 years.	Individual ballot of the membership at branch, workplace or by post; served until retirement.
EETPU	Individual postal votes every 5 years.	Individual postal votes every 5 years.
NATFHE	Votes of the national council every 3 years.	Appointed by NEC delegates; served until retirement.
CPSA	Regional councillor's votes every year.	Appointed by the NEC; served until retirement.

In the case of the BFAWU, the NEC was elected at the annual conference every three years, whilst the general secretary was appointed. In respect of ASLEF the NEC was elected by branch block-vote every three years and the general secretary was elected once by a branch block-vote. In the case of the TGWU, the NEC was elected from the geographical regions and trade groups. The general secretary was elected by individual membership ballot once. The RMT elected the NEC by the branch block-vote system every three years. The general secretary was elected by individual membership vote but served until retirement. The EETPU elected both the NEC and the general secretary using the secret postal ballot method every five years. NATFHE elected the NEC through votes of the national council. The NEC appointed its general secretary, who served until retirement. Finally, the CPSA elected the NEC from regional councillor's votes every year and the general secretary was appointed.

Thus, with regard to the election of the NEC, only one of the seven case-study unions traditionally elected NEC members by secret postal ballot. Of the remainder, one union elected members at annual conference, and one elected members from geographical regions and trade groups (the regional and trade group representatives

being elected by ballot at branch or workplace meetings). Two elected members using the branch block-vote, and one elected members from national councillor's votes (national councillors were elected by representatives at the regions, the regional delegates having been elected by branch votes). Finally, one was elected by the votes of regional councillors. Regional councillors were elected by branch block-vote.

In respect of the position of general secretary, prior to the introduction of the new legislation only one union traditionally elected the post using the secret postal ballot method. Of the remainder, three unions appointed the position; one used the branch-block-vote system, and two used individual votes at branches. The period of office for the respective positions varied. However, in the majority of unions the general secretary could serve until retirement.

The precise impact of the legal requirements introduced by Conservative legislation in 1984 and 1988 on the case-study unions differed. So too did the reactions of each union: some complied immediately, others complied after an initial period of resistance, one union did not comply at all (see table 4.2 below). The legislation pertaining to elections transformed the traditional procedures of ASLEF, TGWU, RMT and NATFHE as the unions altered their procedures to comply with the legal requirements, causing greater uniformity in this aspect of union government. The RMT was an example of one trade union that extended direct elections to lower level officials, although this decision was said not to be influenced by the law but ongoing internal reform. The TGWU also reformed its rules on elections to the NEC in the interests of equal opportunities. Hence in these trade unions reform to the election system occurred not only for legal reasons. Other factors operated alongside the law, shaping change (Lockwood 2004).

In contrast, the BFAWU decided to ignore the legislation, retaining unchallenged their pre-existing rules. The union membership was united in support of the stance taken by the leadership. To date, no union member has complained about the fact that the election methods of the union do not accord with the legal requirements. The EETPU were virtually unaffected since they already complied with the Conservative model. Finally, the CPSA introduced rules that corresponded to those of the

Conservative provisions contained in TUA 1984 in advance of the legislation being passed and subsequently attempted to comply with the provisions introduced by the EA 1988.

Table 4.2 Methods of Electing the Executive and General Secretary in the Case-Study, Unions Post Conservative Legislation

UNION	EXECUTIVE ELECTIONS	GENERAL SECRETARY ELECTIONS
BFAWU	A mix of workplace and secret postal ballots.	A mix of workplace and secret postal ballots.
ASLEF	Elected every 5 years by secret postal ballot.	Elected every 5 years by secret postal ballot.
RMT	Elected every 5 years by secret postal ballot.	Elected every 5 years by secret postal ballot.
T&G	Elected every 5 years by secret postal ballot.	Elected every 5 years by secret postal ballot.
EETPU	Elected every 5 years by secret postal ballot.	Elected every 5 years by secret postal ballot.
NATFHE	Elected every 5 years by secret postal ballot.	Elected every 5 years by secret postal ballot.
CPSA	Elected every 5 years by secret postal ballot.	Elected every 5 years by secret postal ballot.

Whilst the introduction of the election provisions caused the majority of unions to alter their methods of electing senior officials, the evidence was that it did not necessarily result in the election of more moderate candidates. The impact of the law in this context has proved unpredictable. In the BFAWU the traditional left-wing group, affiliated to the Labour Party, has continued unchallenged. In ASLEF, immediately following the introduction of election ballots the traditional moderate faction retained control. In the 1990s there was a shift in the political dynamics of the union, with the election of a recognised left-wing general secretary and executive. In 2003 the left-wing group control the majority of seats on the NEC; however, a general secretary representing the right-wing of the union has been voted in. In the RMT and TGWU the left-wing faction has maintained control. However, both trade unions have seen the election of a new breed of trade union general secretary with links to the Socialist Labour Party. During the 1990s the EETPU remained under control of the right-wing leadership of Ken Jackson. However, since merger activity the left-wing

factions have made important gains. This has seen the election of the Social Alliance candidate as general secretary in 2003. In contrast, NATFHE has moved from being controlled by candidates recognised as representing left-wing groups, such as the Communist Party, Militant or the Socialist Labour Party, to more moderate candidates. Finally, in the CPSA, the NEC remained in the control of a right-wing group; however, in the most recent general secretary election, the Socialist Alliance candidate, Mark Serwokta, was successful. This outcome in the leadership can be explained by reference to a variety of factors. First, it reflected membership dissatisfaction with the leadership, in respect to negotiations with employers over terms and conditions of employment. The membership perceived a lack of assertiveness in representing the case for higher pay and conditions through the media and in talks with employers. Second, the incumbent general secretary (Barry Reamsbottom) was an ally of the Prime Minister, and this connection made him unpopular with the rank and file. The membership voted for Mark Serwokta, a candidate whose election platform was critical of the Labour Government (Waddington 2003: 340). Finally, it is also a demonstration of the unpredictable voting behaviour of a transient membership.

4.3 Secret Ballots for Retaining and Reviewing Political Funds

In line with the new legislative requirements, ballots establishing union political funds have been held from 1985-8 and 1993-8. The majority of case-study unions worked with the wider trade union movement in order to run campaigns that promoted retention of the political fund (Blackwell and Terry 1987; Fatchett 1987; Grant 1987; Grant and Lockwood 1999; Leopold 1986, 1988, 1997; Steele *et al.* 1986). The campaigns were organised by the Trades Union Coordinating Committee (TUCC). Membership of the TUCC was not confined to unions that were affiliated to the Labour Party, nor was it conditional upon a union's being affiliated to the Trades Union Congress (TUC). The political funds campaigns represented an unprecedented level of coordination within the trade union movement. As one national official from the TGWU explained:

> Unions thought to have the best chance of securing pro-retention votes agreed to hold their ballots early in the relevant campaign. This was designed to produce a 'band-wagon' effect and also to allow a longer period in which to work for a pro-retention vote from those unions that seemed likely to lose their funds.

4.3.1 The Case-Study Trade Unions and Political Fund Ballots

The political fund legislation was an area in which the **BFAWU** complied with Conservative legislation. There were several factors that dictated this response; the fact that the union movement as a whole was coordinating a united campaign on the issue, the requirement to have balloting rules approved by the CO and, finally, the media interest surrounding political fund ballots. As the BFAWU general secretary stated:

> Failure to comply with the political fund legislation was not an option. It would have drawn attention to our procedures and undermined the whole trade union response to this unjust law.

In the 1985 review ballot, the BFAWU obtained an 88 per cent majority in favour of the resolution to retain a political fund. Being a relatively small trade union the BFAWU benefited considerably from being part of the TUCC campaign. BFAWU national officials explained:

> The running of a centralised campaign reduced costs by avoiding unnecessary duplication and enabled the pooling of resources. For the BFAWU the cost of developing and producing material of the quality and professionalism that was available for this campaign was prohibitive. The TUCC material gave us exactly what we needed but at minimal cost.

However, a disappointment for the union was that their subsequent review ballot held in 1994 resulted in a 6 per cent drop in the 'yes', vote despite a vigorous and well-organised campaign. This still gave the BFAWU a 'yes' vote around the average, but turn-out fell dramatically from 61 per cent in 1985 to 24 per cent in 1994. The major factor for the lower turn-out was the union's making the transition from workplace ballots to postal ballots in order to comply with TURERA 1993. On this point, the union commented in its monthly newsletter to members:

> The political fund legislation forced the union to run a postal ballot rather than in the union's view the 'more democratic workplace ballot'. The requirement to hold a postal ballot has had a clear detrimental impact on membership participation (Food Worker, November 1994).

In the **ASLEF** political fund ballot of 1985 the union joined the TUCC coordinated campaign, and held a ballot in accordance with the rules prescribed by the legislation. However, as the 'specialist official with responsibility for rule changes' explained:

> The Society acted in step with most TUC affiliated unions who did not take ballot rules through formal rules revision procedures, as it was believed that this would give added legitimacy to rules which were being imposed upon unions

The NEC resolved to keep the ballot rules separate from those agreed after democratic debate. Officials and lay members of ASLEF expressed the view that 'the political fund provisions represented a vicious attack on the union movement'. The view the executive communicated to the membership was that the organisation would be shattered without a political fund. The NEC issued the following statement in a newsletter to branches:

> ASLEF would not be able to lobby members of Parliament if there were any costs involved. The union would not be able to attend any demonstration in support of ASLEF policies if it was determined that those policies were of a political nature.

Prior to the first review ballot executive officers and district officers were extremely active in the field campaigning for a 'yes' vote. In the 1985 ballot ASLEF used a combined system of voting. Ballot papers were distributed at the workplace and returned by post. This procured one of the highest participation rates in the whole trade union movement, with 93 per cent in favour.

The leadership joined the TUCC campaign strategy once again for the 1994 review ballot and launched yet another intensive campaign, confident that they would secure yet another 'yes' vote. The union found the materials supplied by the TUCC extremely effective in sending a united message from the whole union movement to the membership, and in securing support for the political fund. The leadership of the union was rewarded with a replication of the very high 93 per cent in favour. The ASLEF finance officer expressed the view that:

> Although expensive and time-consuming to run, the political fund ballots enabled the union to promote the fund and obtain support for its existence amongst the membership.

The following statement by Mick Rix, the then ASLEF general secretary, illustrates with a degree of irony the impact of the Conservative reforms pertaining to the political fund.

> The trade union movement has used Conservative imposed ballots to legitimise political funds. The union movement is grateful for that opportunity.

The **RMT** also joined the TUCC campaign on both occasions, and each time was overtly political in its campaigning. Whilst most unions chose to downplay their relationship with the Labour Party, the RMT did not. The RMT issued campaign literature that made it very clear that they sponsored Labour MPs, MEPs and local

councillors in order to have an effective political voice. The RMT issued a Pocket Guide to members that stressed its links with the Labour Party allowed 20,000 RMT members to vote in the leader/deputy leader election in 1994, and 1200 to join the Party at the levy-payer's rate of £3. The political element of the campaigning was regarded as an important feature for the generation of support within the union. This was particularly pertinent at a time of continuing transformation in the privatised rail industry. Members were told that without a political fund the union would encounter difficulty 'protecting and expanding employment'. In addition, the union literature suggested that it was wrong to deny their union and its members a political voice, especially since those who objected to unions playing such a role had the opportunity to 'contract out' of paying into political funds. For example, campaign literature distributed by the union emphasised that:

> This vote is not about paying into the political fund – it's about retaining one. You don't have to pay if you don't want to, but don't take away the choice from those who do - say yes to a voice.

In both 1985 and 1994 the union secured significant majorities in favour, as the political officer stated:

> Political fund ballots demonstrated that the union movement does have the capacity to mobilise its members if it communicates with them in the right way.

The success of the RMT in retaining its political fund in the second wave of ballots was particularly pleasing to the union. This was because the issue of 'check-off' had to be dealt with at the same point in time. 'Check-off' is the system by which an employer, in agreement with the union, deducts union dues direct from members' wages. In the past many employers, reluctant to operate a two-tier system, deducted both ordinary contributions and the political levy from all members, leaving the union to reimburse exempt members for the latter. Section 18 of TUA 1984 changed this by giving the exempt member the right to insist that his employer collect his dues at the lower rate. At this time the law required employers to seek fresh authorisation from workers for check-off every three years. As a result, British Rail cancelled the RMT check-off facilities. The union needed to respond promptly to this threat to its income.

The **TGWU** did not traditionally promote the existence of its political fund or its financial link with the Labour Party. This is despite the fact that the union was one of the largest contributors to Labour Party funds. Political fund ballots changed this position. When the Conservatives introduced the political fund review ballots, the then Employment Secretary Tom King stated:

> I would be staggered if the TGWU were able to procure a vote in favour for the retention of a political fund anywhere near the 98 per cent of members who paid the political fund levy in 1982.

Mr King must therefore have been moderately surprised when the TGWU in the 1985 ballot procured a 78 per cent vote in favour. In the subsequent round of review ballots held in the 1990s, the TGWU were the first union to be balloted in March 1994. This was partly because Bill Morris was chair of the TUCC and wanted to show a lead, and partly to obtain 75 per cent refund costs before the proportion fell to 50 per cent on 1 April. The 1994 vote saw the union increase its 'yes' vote to 82 per cent although turn-out fell from 49 per cent in 1985 to 29 per cent in 1994. During the campaign the TGWU was vocal in stressing the importance of protecting the right to campaign on political issues, and of its strong links with the Labour Party.

With respect to the most recent round of political fund ballots, Bill Morris highlighted a crucial aspect behind the success of the campaign. Morris stated:

> It was enormously instrumental that the TUCC was successful in influencing the model rules for the ballot which were issued by the CO.

The main point of difference was over the ability of unions to send out additional material with ballot papers; a point that was conceded by the CO, even to the extent of accepting the TUCC's form of words for the standard explanatory statement, which it was agreed could accompany the ballot paper.

Conservative legislation singularly failed to threaten the existence of the TGWU political fund. Indeed, the legislation encouraged the union to promote the political fund and the importance of its link with the Labour Party to a much greater extent than ever before. The view of the union is that political fund ballots have helped to legitimise the activities of trade unions in this domain, and have helped to send out a clear message to the labour movement as a whole of the importance of such funds.

EETPU officials regarded the political fund legislation as a rather 'spiteful and unnecessary step' by the then Conservative government. One national official of the union commented:

> There was a significant level of union cooperation because the political fund issue turned out to be the one area of Conservative legislation that united activists at every level and across the political divide in an almost unprecedented manner.

The then EETPU was part of the TUCC in the 1985/86 retention campaign. The EETPU undertook a carefully structured campaign that relied on effective communication between the union and members, with shop stewards and branch officials being key agents in disseminating information at workplaces. The campaign held in 1986 resulted in an 84 per cent vote in favour of retaining their political fund.

The EETPU did not take part in the TUCC campaign during the second round of review ballots, because the phasing out of state funding for union ballots persuaded its leadership that the union should hold their review ballot early. In fact, it had completed its ballot in 1993, using its own material, before the TUCC commenced operation. The union stressed that its political fund was:

> used for its our own political structure, to support local and national Labour candidates and to affiliate to Labour on behalf of all those members who pay the voluntary political levy.

For this second review ballot, the union adopted a campaign of a far more political nature. It emphasised its links to the Labour Party and pointed out that while trade unions were subject to extensive regulatory mechanisms concerning their political funds, donations to political parties (notably the Conservative Party) by business organisations were subject to minimal legal regulation. The union produced campaign literature stating:

> It is well known that the Conservative Party receives millions of pounds in donations from companies and multi-national employers. Having such wealthy contributors helps the Tories win and keep power. We all know that it is dangerous for one party to be too powerful. Every member of the union will have the chance to take part in the ballot and, even though some may not be Labour voters, they can comfortably vote to support the political fund because their vote will support British democracy.

However, although the union ran an aggressive campaign and obtained a 'yes' vote in favour, the EETPU was one of the unions whose percentage 'yes' vote dropped significantly compared to the 'yes' vote in its 1986 ballot. A national official explained that this was symptomatic of 'ballot fatigue'. The official stated that:

> The union was having difficulty in persuading large numbers of members to vote because they were now being asked to vote on such a variety of issues on countless occasions. It was a matter which gave the union considerable cause for concern. The union was constantly communicating to members the importance of voting.

An additional problem the EETPU faced at the time of the second review ballot was that they were also heavily involved in assessing the impact of check-off and trying to warn members about its implications for the union and its members. This was another factor which had an influence on the timing of its political fund ballot.

NATFHE has always operated a political fund but has never been affiliated to the Labour Party. Although not formally part of the TUCC campaign, it did use and adapt the literature and material to suit its own requirements. As one national official put it:

> We modified the TUCC literature to suit our needs, but at the same time we recognised that it was important to keep the same styles, artwork, etc., as other unions so that we presented a unified message. In particular in colleges and new universities where there is more than one union, it was important to have similar sets of material going up on the wall.

The campaign material produced by NATFHE stressed the importance of a political fund. The existence of a political fund was conveyed to the membership as being imperative in order to facilitate commenting and acting against any further erosion of the conditions of employment in the further education sector, and against any changes in the management and organisation of both further and higher education. In each of its review ballots in 1988 and 1998, the political fund was reaffirmed, with overwhelming majorities in favour on each occasion. In this respect, one national official observed:

> The energetic campaigning and direct contact with individual members were key components of our political fund campaign. This produced higher turn-outs in the political fund ballots than in any other ballot we have held.

However, one problem for the union in the second review ballot was that it also had to deal with the implications of check- off. This resulted in the union delaying the timing of its political fund ballot. One national official commented:

> The issue of check-off was an administrative nightmare, and officers could not have dealt with the political fund issue at the same time.

In respect to political fund ballots, one executive member observed:

> The Conservatives hoped that the political fund would wither away. In fact Conservative legislation has actually given credibility to the political activities of trade unions.

The **CPSA** was part of the TUCC campaign, and in 1986 it obtained an overwhelming 'yes' vote of (74 per cent). One national official highlighted the importance of the united union campaign in securing this result.

> Unions could make use of an 'off the shelf' campaign that benefited from a centrally coordinated body of work, but which could easily be adapted to target members at every level.

In 1997 members of the CPSA voted against retention of the political fund for a number of what might be termed CPSA-specific reasons. In the eleven months prior to holding a review ballot, the CPSA had balloted its members five times on issues related to its proposed 1998 merger with the Public Services, Tax and Commerce Union (PTC). Given the low turn-out for its review ballot (30 per cent), CPSA members may therefore have been suffering from 'ballot fatigue'. Ballot fatigue may also have contributed to an apparent apathy among CPSA members about the need to retain a political fund. Moreover, the union believed that because it had channelled considerable effort into its merger campaign, this might have been at the expense of its political fund campaign. Consequently, it failed to mobilise sufficient interest and support for the continuation of its political fund.

The Public and Commercial Services Union (PCS), formed in 1998 following the amalgamation of the CPSA and PTC, held a ballot during 1999 on a resolution to establish a new political fund, but again the members of the PCS voted against the resolution. This result could also be linked to such factors as timing and time-scale of the ballot and ballot fatigue. In addition to the above reasons, an analysis of the union also offers a more 'political' explanation for the failure of the ballot. As one branch official emphasised:

> When the Conservatives were in power the civil service unions could argue that the government could use the law to stop campaigns on 'political' issues, for example membership rights at GCHQ. When Labour came to power the climate changed, and members often appear to see the only purpose of the fund as being to make political affiliation.

Furthermore, six national officials interviewed claimed that members had, in increasing numbers, started to oppose the notion of a political fund because of the nature of their work within the civil service for the government of the day. Thus, the evidence from the research carried out is that even if the PCS held another vote on the

political fund the result would be the same. The result of the 1997 CPSA political fund ballot is a reflection of the unpredictability of the union's membership and the political tension within the union that has been apparent throughout the research process.

4.3.2 Summary of Key Findings and Observations Re Political Fund Ballots

An analysis of the events that occurred in each of the individual case-study unions enables the following key findings and observations to be established. First, the Conservative reforms of the law surrounding political funds have not produced the desired effect. Six out of the seven case-study unions retained their political fund, with healthy majorities in the most recent round of review ballots. In respect to the case-study unions, the Conservatives' belief that many votes would go against the retention of a political fund has proved woefully inaccurate.

Table 4.3 Trade Union Political Fund Review Ballots, Voting 1985-8 and 1993-8 Compared for the Case-Study Unions

Union	Year of ballot	% Yes vote 1985-8	% No vote 1985-8	Turn-out 1985-8	Year of ballot	% Yes vote 1993-8	% No vote 1993-8	% Turn-out 1993-8
BFAWU	1985	88	12	68	1994	82	18	24
ASLEF	1985	93	7	85	1994	93	7	56
RMT	1985	87	13	61	1994	83	17	28
TGWU	1985	79	21	49	1994	82	18	29
EETPU	1985	84	16	47	1993	75	25	25
NATFHE	1987	78	22	57	1998	79	21	26
CPSA	1986	73	27	53	1997	35	65	30

All calculations based on valid votes cast. All figures rounded to the nearest whole numbers. *Sources*: figures supplied by individual unions from 1985-6 and 1993-8 and cited by Grant and Lockwood (1999).

An analysis of the political fund ballot results for the case-study unions shows that the turn-out for the ballots held between 1993-8 was in many cases significantly lower than that obtained for those held from 1985 to 1988. The average turn-out for the case-study unions in the 1985-8 ballots was 60 per cent, and ranged from 47 to 85 per cent by union. For the 1993-8 period, average turn-out stood at 32 per cent, and ranged from 24 to 56 per cent. The difference in the figures for average turn-out can be explained by changes in the law since the first round of ballots were held. The EA 1988, as amended by TURERA 1993, required future political fund review ballots to

be postal. Unions holding political funds ballots from 1985-8 had been allowed to choose between postal or workplace ballots. Many of the case-study unions chose the latter type because they found them to encourage higher turn-outs.

In percentage terms, the average number of votes in favour of the retention of political funds for the case-study unions was higher in the 1985-8 round of ballots than from 1993-8. For the 1985-8 ballots it stood at 83 per cent, while for 1993-8 it was 75 per cent. The TGWU and NATFHE increased their 'yes' vote. The BFAWU, the RMT and the EETPU saw theirs decrease. The ASLEF 'yes' vote remained the same, but the CPSA 'yes' vote collapsed, resulting in the union's failing to retain its political fund. The range of 'yes' votes among the case-study unions altered. For 1985-8 it ranged from 73 to 93 per cent, but for the 1993-8 period it was between 35 and 93 per cent. The major factor for the lower number of votes in favour of retention of political funds was the reduction in turn-out following the transition from workplace ballots to postal ballots in order to comply with TURERA 1993 (Grant and Lockwood 1999).

One important factor, which determined the timing of the second round of review ballots and was also reported to have caused administrative problems for the unions, was the issue of check-off. Unions saw this as a significant threat to their finances. Officials at the RMT, NATFHE and the EETPU all explained that the timing of their political fund review ballots had been delayed until they had concluded their campaign to remind and persuade members to renew their payment of union dues via check-off. One national official at the RMT believed that:

> The check-off campaign was a huge operation that diverted resources in the union from other activities. A lot of officials had to be involved in a lot of the work. To have imposed the political funds campaign on them at the same time as they were dealing with check-off would have been impossible.

Another national official, this time from the EETPU, remarked:

> The check- off legislation was an attack on the financial base of individual trade unions. It was imperative for trade unions to develop a strategy to accommodate the effects of the pending legislation before dealing with other issues such as the political fund.

One important factor, identified by Bill Morris of the TGWU, that impacted on the results of the review ballots in 1993-8 concerned the role of the CO in the ballot

process. Under the terms of TURERA 1993, the CO was responsible for drawing up 'model rules' concerning the conduct of the ballots (Certification Office, 1993). The TUCC argued that the model rules originally drafted by the CO made the wording of the ballot paper unintelligible and would dissuade some members from voting or might lead to their being confused. Members needed their ballot papers to be accompanied by literature explaining what the ballot was about and why it was necessary. Initially, the CO was adamant that the rules disallowed additional material being sent out with ballot papers. This was a major point of disagreement with the unions, who sought and obtained legal advice to the contrary. After some discussion with the CO it was agreed that an explanatory statement could accompany each ballot paper. This was adjusted to each union's requirements. It had the union's name and logo on it, and incorporated words and phrases that ran throughout the TUCC pro-retention campaign. This enabled union members to make the connection between the campaign issues and the actual ballot form. As such, the explanatory statement can be regarded as assisting the TUCC campaign. Persuading the CO to allow it was therefore a significant success for unions.

The majority of the case-study unions have found that the 1985-8 round of ballots, and the results of the 1993-8 review ballots served to legitimise and consolidate trade union political funds in the eyes of both union members and the general public. On the whole, the case-study unions have good cause to feel pleased with the outcomes of the 1990s review ballots. However, national officials at the BFAWU, ASLEF, RMT, and TGWU all acknowledged that the retention of their political funds must, in part, be attributed to the union campaign organised via the TUCC. The campaign was highly successful at promoting a unified, coherent message. Finally, the relatively few members who have exercised their right to contract out of the political fund, resulting in unexpectedly high levels of members paying into the trade union affiliated political funds,. also demonstrates membership support for the political fund (Irvine 2001). The following figures are available for the case-study unions.

Table 4.4 Summary of Members Contributing and Not Contributing to the Political Fund of Relevant Trade Unions

Union	Number of members Contributing to political fund	Number of members contracting out of political fund	Percentage Contracting out
BFAWU	28,040	12	0.04
ASLEF	14, 168	553	3.7
RMT	52,266	778	1.5
TGWU	808,108	23,787	2.9
EETPU	420,818	107,920	20.4
NATFHE	52,266	9,598	0.15
CPSA members voted against the political fund			

4.4 Conclusions

4.4.1 Conservative Balloting Legislation and Changes to Procedures and Practices

The legislative provisions relating to union elections were particularly significant since previously no external ground rules had ever existed, as far as internal union elections were concerned (Deakin and Morris 1998). The legislation imposed a uniform system of election, overriding the traditional autonomy that previously existed. The effect of the legislation is that elections must be conducted by direct elections. Indirect elections and branch block elections have been rendered unlawful. Prior to the introduction of the legislation the election of senior officials varied substantially across the union movement. As the rule change officer at ASLEF observed:

> The differences in trade union electoral methods reflected a variety of factors: the skilled and unskilled origin of the union, its current spread of membership and the way in which the union's current structure emerged as a result of an amalgamation.

A number of unions had to change their systems of election, either because they did not select their executives by membership vote, or because they did so but only by means of indirect election. For example, in their NEC elections the BFAWU, ASLEF, RMT, TGWU and NATFHE did not provide for direct election by the members of the candidates of their choice. Four unions significantly affected by the Conservative legislation were the TGWU, ASLEF, NATFHE and the then NUR. The TGWU was compelled to change its practice of indirectly electing its NEC from the

trade groups and regions, despite believing that this constituted the fairest method of ensuring a representative outcome of its diverse membership base. In respect to ASLEF, the practice of electing the NEC through individual votes at branches was rendered unlawful. In NATFHE the practice of selecting the NEC from national council votes was rendered unlawful. Finally, the then NUR was subject to the first declaration by the CO, who held that the union's system of branch block-voting was in breach of the Act - Stemp and Lowes v NUR, 10th March 1986.

The legal provisions standardised the way in which the NEC and general secretaries were elected in all the case-study unions except for the BFAWU. The BFAWU decided not to comply with the legislative requirements. To date, the BFAWU has remained unchallenged by its membership because of its homogeneity. However, the majority of the remaining case-study unions felt they had no alternative but to jettison their traditional electoral practices and procedures, however representative and democratic, in favour of the Conservative legislative requirements.

The requirement to hold secret postal ballots for the election of senior officials has meant that in ASLEF, TGWU, RMT, NATFHE and the CPSA certain activists, groups and committees have been divested of the power, control and influence they traditionally held over such decisions. The right of decision-making has now been transferred to the wider membership. Conversely, the legal provisions concerning the balloting process, particularly those relating to the selection of candidates and candidates' election addresses, have given groups and factions greater opportunity to campaign than existed under the traditional procedures of trade unions.

The fieldwork has shown that ASLEF, TGWU, RMT and NATFHE all altered their electoral procedures to comply with the Conservative legislation, after dissident members complained or threatened to complain to the CO. In the case of ASLEF, the changes to their arrangements were initially made without alteration to the rule-book. This was done in the hope that the union would be able to return quickly to its old ways when a future labour government repealed the Act. Once it was apparent that such reform would not take place, ASLEF amended its rule-book accordingly. All the other trade unions, with the exception of the BFAWU, provide that elections will be held in accordance with statutory provisions in operation at the time.

While the new legislation prescribes the methods, timing and bodies subject to election, it does allow scope for trade unions to follow old procedures, albeit in a limited respect. For example, the union can determine its own internal mechanisms for selecting candidates and can inform members that a particular candidate is the union's preferred choice. Indeed, in general secretary elections the union can issue a statement, endorsed by the NEC, stating that such an election is required not by union rules but rather by national legislation and recommending that the incumbent general secretary should be nominated. The legislation merely enables opponents to stand against the union's preferred candidate. In the RMT's case, the decision to elect the AGM by secret postal ballot has enabled it to retain a key decision-making body, traditionally dominated by left-wing candidates, and to ensure that the union is acting within the confines of the law. In short, the overwhelming evidence from the case-study unions is that changes in the law relating to the selection of union officials, which were greeted negatively on their inception by the labour movement, have been accommodated into union arrangements and become firmly established (Lockwood 2001; Undy *et al.* 1996).

The balloting requirements pertaining to political funds also required changes to the constitutions of the case-study unions. The TUA 1984 caused all the case-study unions to change their practice relating to political funds, introducing periodic ballots. The trade unions also had to develop new rules, relating to balloting procedures, in order to ensure compliance with the legislation. The rules governing each ballot had to be approved by the CO. As with ballots on elections, the ballot had to be postal and supervised by an independent scrutineer. This imposed substantial costs upon the case-study unions. The case-study unions were also required to amend their rules to ensure that (with the exception of overseas members) no groups were excluded from the balloting constituency. The regulations also imposed a further specific administrative burden upon the individual unions by requiring them to notify members of their right of exemption from contributing to the political fund, in a form specified by s. 84 (1) TULRCA 1992. In short, all the case-study unions complied with the political fund legislation, believing that a failure to do so would be futile, placing at risk their political activities. From both 1985-8 and 1993-8, the union movement united and set up the TUCC. This duly orchestrated the highly successful

campaigns that enabled unions (with the exception of the CPSA in 1997) to retain political funds. One reason for the cohesive nature of the union movement's campaign on political funds was that, as there was no previous 'history' of such ballots, this made such a unified response possible.

4.4.2 Conservative Balloting Legislation and Trade Union Decision-making

Whilst the legislation caused specific, substantive changes to union constitutions, it is evident that the legal provisions did not necessarily produce more moderate decision-making by the membership. Indeed, the behaviour of members was often unpredictable and linked to union-specific developments and political circumstances. In respect to the results of union elections, it has been demonstrated that at various junctures there have been gains and losses for moderate, left-wing and right-wing candidates.

The period 1990 to 2003 saw the following developments. In ASLEF, significant shifts to the left of the union occurred, with successes for Socialist Labour candidates in both the general secretary and NEC elections during the 1990s. In the TGWU, the moderate leadership of Bill Morris as general secretary continued, and control of the NEC remained with candidates drawn from left of the Labour movement who had strong links with the Labour Party. In the BFAWU the status quo has been maintained, with the leadership affiliated to the Labour party remaining in control. In NATFHE and the CPSA moderates emerged as the controlling group.

However, the new millennium has witnessed some important changes in direction within the respective unions. With respect to ASLEF, the July 2003 general secretary election resulted in the defeat of the left-wing candidate in favour of a right-wing general secretary. In the RMT, TGWU, PCS (incorporating the CPSA) and AEEU (incorporating the EETPU) the general secretary elections have resulted in recognised left-wing candidates, with links to the Socialist Labour Party and Socialist Alliance, emerging as the successful candidates. In these trade unions members expressed their dissatisfaction by voting against candidates for senior office who advocated workplace partnership or close working relations with New Labour (Waddington 2003: 354).

The balloting system has given factions unprecedented opportunities to participate in the electoral process. The left-wing, right-wing and/or moderate factions have operated vigorous and vibrant campaigns, which have mobilised activists. Further, since the legislation left the lower level of union government untouched, local networks and movements have provided an outlet for strong activist involvement through the constitutional structures, which fed into the national organisation of the unions. The opportunity provided by ballots for campaigning, and the strength of and growth in networks, have enabled opinion-formers and activists in the unions specified, who were undermined by changes introduced to comply with Conservative legislation to form an alternative power-base.

The response of the case-study unions to the provisions of the TUA 1984, which compelled unions with political funds to hold a review ballot every ten years, procured some unexpected results for the Conservatives (Blackwell and Terry, 1987; Fatchett 1987; Grant 1987; Grant and Lockwood 1999; Leopold 1986, 1988, 1997; Steele *et al.* 1986). It certainly did not lead to moderate members voting against unions having political funds. From 1985-8, the case-study unions mounted a well organised and sustained campaign on the political funds issue, with the result that they all held successful retention ballots. This was despite the fact that opinion polls published at the time of the initial round of political funds ballots held in 1985 indicated that, in the majority of cases, unions would fail to retain their funds. It was suggested that members would vote against retention because many of them were not trade union activists. Nor did it seem likely that they would vote to retain a fund that appeared to bankroll the Labour Party - a party that fewer than half (38.3 per cent) of trade unionists in the UK had supported in the 1983 general election (Crewe, Fox and Day 1995). The Conservatives' political intentions are revealed here, to reduce the capacity of the trade union movement to 'bankroll' the Labour Party.

In contrast to the political fund ballots held from 1985-8, case-study unions approached the 1990s review ballots brimming with confidence. Indeed, the TUCC campaign guide made it clear that, given the legislative requirement of postal ballots, the key objective was 'to achieve the largest yes vote on the highest possible turn-out' (TUCC 1995: 6). When interviewees were asked to explain in more detail why they

had felt so confident of securing a 'yes' vote they identified a number of factors. At one level, it was clear that unions felt they had learnt how best to approach the ballots as a result of the 1985-8 TUCC campaign. As the political officer at ASLEF put it:

> The first time round nobody really knew how members would vote until the results started rolling in. This time we knew that we had a tried and tested formula and we knew that if we presented the issues the same way as before we would get the results we wanted.

The political fund ballots witnessed a well organised and vociferous campaigning by the case-study unions and the trade union movement as a whole. This was particularly the case in the second round of review ballots. Trade union officials involved in the political fund campaign suggested that the 1993-8 campaign might have benefited from a weakened and unpopular Conservative Government, the rise in popularity of the Labour Party and the idea that unions were no longer seen as a powerful or threatening force. The political officer at the RMT believed that:

> When you look at the campaign of the 1990s compared to the campaign of the 1980s there is no doubt that the political scene had totally changed. The Labour Party was different and public perceptions and public sympathy was more attuned to the aims of the labour movement in the 1990s than it was in the 1980s. Labour was more popular in the polls and unions were seen as pretty much being put upon rather than putting on the government. The Conservatives are so unpopular now as well. Put all that together and it must have had some bearing on the results. I think that a lot of people voted yes to political funds on the basis that in some way they were voting for Labour and against the Conservatives.

Clearly, these factors encouraged union confidence about the outcome of the 1993-8 ballots. What is significant is the way in which this confidence manifested itself during the associated retention campaign. It led to one discernible difference in the 1993-8 campaign as opposed to the 1985-8 campaign. During the campaign of 1985-8, unions tended to play down their financial connections with the Labour Party. However, the political climate of the 1990s encouraged them to point out that while they are subject to extensive regulatory mechanisms concerning their political funds, donations to political parties (notably the Conservative Party) by business organisations are subject to minimal legal regulation. Consequently, and unlike the 1985-8 campaign, the 1993-8 TUCC campaign made great play of this imbalance. For example, the campaign pocket guide contained a section titled 'Political Donations - Who Owns the Tories?' This presented information about major business donors to the Conservative Party and the amounts given. The information was compiled by the Labour Research Department (Labour Research 1995).

The political funds legislation failed to produce any decline in the number of political funds. In fact, it has had the reverse effect, encouraging the union movement to promote the importance of the political fund and the importance of its link with the Labour Party. Indeed, several trade unions created a political fund for the first time (Annual Report of the Certification Officer 1986: 20).

The TUCC campaign was an example of unprecedented collective solidarity and co operation across the whole trade union movement, in response to what was interpreted as anti-trade union legislation. Only the CPSA has cause to be disappointed about the outcome of the second round of ballots. However, as outlined above, there were very specific circumstances that can explain the negative result.

Secret ballots for elections and the political fund were greeted negatively by the labour movement and regarded as an unreasonable interference in the affairs of trade unions. However, whilst there is no doubt from the evidence that the balloting requirements have caused substantive changes to the procedures of trade unions, they have not resulted in more moderate internal decision-making. The majority of case-study unions accommodated the law into their processes, and have used it to legitimise their internal decision-making. Nevertheless, the predominant view amongst shop stewards and national officials is still that workplace ballots rather than postal ballots are the most effective means of encouraging membership involvement and therefore promoting internal democracy. The importance of workplace ballots to 'internal democracy' was clearly missed by the Conservatives with their emphasis on the 'individual' and 'moderation.

Chapter 5 - Industrial Action Balloting and the Case-Study Trade Unions

5.1 Introduction

This chapter provides an analysis of the developments that have taken place within the case-study trade unions in response to the introduction of the Conservative balloting legislation pertaining to ballots on industrial action. Using the data derived from interviews with senior officials, national officials and shop stewards it will seek to link any changes in the unions' approaches to calling, organising or conducting industrial action to the introduction of the new legislation. In this respect, the chapter traces particular developments relating to Research Question 2. It will consider the impact of industrial action ballots on the procedures, practices and behaviour of trade unions and, more specifically, whether workers under the new balloting system seemed more inclined to vote to avoid confrontation with employers and, in so doing, took a less conflictual and more accommodating stance than would have been the case under the old legislative provisions.

5.2 Trade Union Responses to Industrial Action Legislation

Table 7.1 compares the methods for calling industrial action used by each of the seven case-study unions before and after the TUA 1984 and TURERA 1993. In the case of the **BFAWU** the provision contained in the TUA1984, imposing on trade unions the requirement to hold a workplace, semi-postal or fully postal ballot before calling members to take part in industrial action, did not cause any constitutional change. This, as the national officer with specialist responsibility for rule changes noted,

> was because a resolution had been passed at the annual conference of 1979 requiring a fully postal ballot to be held before strike action was called.
>
> The official went on to explain that the resolution was passed in response to the then general secretary of the union having called a national strike without consulting the membership.

Table 5.1: Changes in the Trigger for Industrial Action by Union

Union:	Trigger for Industrial Action		
	Pre 1984:	Post 1984:	Post 1993:
BFAWU	Secret postal ballot	Mixture of secret postal ballots and workplace ballots	Mixture of secret postal ballots and workplace ballots
ASLEF	NEC decision	Workplace ballots	Secret postal ballot
RMT	NEC decision	Workplace ballots	Secret postal ballot
TGWU	NEC decision and workplace votes using a show of hands	Workplace ballots	Secret postal ballot
EETPU	Secret postal ballot	Workplace ballot	Secret postal ballot
NATFHE	Branch ballot	Workplace ballot	Secret postal ballot
CPSA	Sectional ballot	Workplace ballot	Secret postal ballot

The introduction of local collective bargaining in 1986 resulted in national officials and shop stewards asserting that although the decision to call an industrial action ballot should remain a matter for the executive, branches should determine whether to hold workplace ballots or postal ballots. In 1987, as part of an ongoing process of internal democratic reform, the leadership acceded to this request (Food Worker 1987). Following this decision, the leadership of the union passed a motion at the 1988 annual conference requiring that, prior to the calling of an industrial action ballot, all branches involved must hold a special meeting to inform members of the issues. One national official stated: 'this was necessary so that members could form their own opinions democratically'. The requirement to hold such a pre-ballot meeting was also recognised as important by the leadership since it enabled the issues involved in the dispute to be discussed with the members by both national and local officials. It also afforded the union the opportunity to foster a collective ethos, which was regarded by union officials as a necessity if industrial action was to be a success. The introduction of decentralised collective bargaining also increased the responsibility, role and power of shop stewards, who were now primary figures in the negotiating process. The union was required to provide greater support services to shop stewards in terms of training and advice, particularly in relation to legal issues. A rapid response system was set up to ensure that shop stewards were able to gain help from national officials. The BFAWU instituted regular meetings of national

officers with full and part-time officers to provide protection against the pursuit of unpopular goals and objectives. The introduction of new negotiating committees to coordinate and develop bargaining strategy became new units of union structure. Representation on these committees was drawn from all ranks of the union (Food Worker 1987).

In 1993 TURERA amended the law, requiring *inter alia* that such ballots must be conducted by the fully postal ballot method. The BFAWU decided to resist the legislation, and continued its practice of holding workplace ballots. As one shop steward stated:

> In our experience workplace ballots increase the turn-out and the representativeness of industrial action votes. A vote in favour of industrial action gives the employer a definite message and strengthens the position of the union.

Since the introduction of the requirement to hold fully postal ballots prior to calling industrial action no employer has actually taken legal action against the BFAWU where a workplace ballot has been held. One employer threatened to seek an injunction against the union on two occasions but the union ignored the threat and the threat was subsequently withdrawn (TUC 1998: 19). To date, employers dealing with the BFAWU have been reluctant to resort to use of the law, and close employer ties have been an important factor in the lack of challenge. The union is relatively self-contained and small, covering only the baking and frozen food industries. This has meant that over many years stable relationships have been developed with employers. Indeed, in 2002 a partnership agreement was concluded between the British Bakers' Federation and the generally portrayed as 'left-led' leadership of the BFAWU (Waddington 2003). Another reason for the lack of challenge is that the CO will not investigate trade unions on his own initiative to establish whether a particular union is in compliance with the law. Enforcement of these laws is a complaint-driven process. However, the policy of the union in this domain is one fraught with risk. The continuing refusal to comply with the law could ultimately lead to the sequestration of its assets, should an employer follow through with legal action.

> The BFAWU also hold reference-back ballots of the membership at the workplace to test the acceptability of any proposed negotiated settlement between management and trade union representatives. This development came as a result of self-reform in 1979, and was not influenced by any of the Conservative legislation on secret ballots (Food Worker 1988).

Changes undertaken by the BFAWU with respect to balloting on industrial action were introduced as a consequence of pressure from national officials and shop stewards and the ongoing process of union democratic reform commenced in 1979, rather than originating in the statutory regulations. The introduction of decentralised collective bargaining in 1986 also caused change, with negotiations shifting from national to local level. This increased the responsibility, role and power of shop stewards, who now became primary figures in the negotiating process. It was essential for shop stewards to be well trained and advised on bargaining strategy and the legal process relating to industrial action.

The **ASLEF** union leadership and members regarded the requirement to ballot members prior to engaging in industrial action as an unjustified interference by the state in its internal affairs. The union's initial response was that it should ignore the legislation and retain its own rules. The following quotes from speeches by lay officials at the union's 1985 conference encapsulate the mood within the union at this juncture:

> Conference should instruct the NEC to defy the provisions of the Trade Union Act 1984 in relation to holding secret ballots for disputes. (shop steward)
>
> Conference instructs the executive not to introduce secret ballots for the calling of industrial action and to retain our democratically developed rules. (King's Cross representative)

However, ASLEF was to find that it was extremely susceptible to the threat of legal actions if a ballot of the membership was not held. As one national official stated:

> Passengers who missed business appointments because of action that was put on without a ballot could sue. Firms who had contracts frustrated because action was taken without a ballot could sue and the employers could sue the union either for the failure to ballot or technical errors in procedure. Soon after the legislation was introduced the union was subject to legal action for the failure to hold a ballot with an initial claim of £50,000, with the prospect of further claims to be made against the union.

The legal action taken against ASLEF made the dangers of resisting the law and the potential risk of having assets sequestrated readily apparent. The leadership took the decision to cease resisting the law and to comply with it. The introduction of secret ballots for industrial action eroded the long-standing norm within the union. This gave the NEC power to decide at any time to withdraw members from their employment or take any other form of industrial action. Whilst the immediate reaction to secret ballots from ASLEF had been outright opposition, conference

reports post-1986 reveal a significant change in perspective. National officials and shop stewards emphasised in debates how industrial action ballots could be used to legitimate the actions of officials and members. This could be used as a weapon against employers. Indeed, ASLEF is an example of one union that has not lost a strike ballot that they have held. One national official commented:

> Industrial action ballots can be used to the advantage of the union. It provides an opportunity for the union to communicate to the membership the key issues of the dispute. Shop stewards see strike balloting as an opportunity to flex union muscle. Shops stewards have a key role in mobilising workers to take collective action.

However, subsequent legal changes made the holding of industrial action more complex and problematic. As a consequence, ASLEF had to make changes to its rules on the conduct of ballots. In particular, changes to ASLEF's rules on industrial action were made, following the introduction of the EA 1988. The Act obliged a union to hold separate strike-ballots in each work-place and to declare results separately. As one shop steward noted:

> As a result the more militant members at politically active workplaces were not able to place pressure on those less inclined to take collective action at other workplaces, hence undermining collective solidarity within the union.

The introduction of TURERA 1993 also required ASLEF to use postal rather than workplace ballots as the trigger for industrial action. In order to ensure that ballots complied with the legislation, the union devised and issued its own detailed regulations to full-time officers and lay activists. Interviews held with national officials, the rule-change officer and shop stewards revealed that the union had been plagued by a series of problems relating to the legal provisions governing industrial action. The union found it had to be extremely careful not to make minor breaches of balloting regulations that would invalidate the ballot. This was particularly pertinent since employers had proved themselves ready to apply for injunctions to prevent legal action taking place. The ASLEF official responsible for overseeing rule changes observed that the legislation:

> caused the union an administrative nightmare, undermined the function of the union, hampered the union's ability to call lawful industrial action.

In respect to unofficial action, one ASLEF shop steward struck succinctly at the net effect of the legislation.

> My personal experience is that few outbreaks of spontaneous action occur. The law and the willingness of train operators to use the law has been the key reason for this. The union has to distance itself from unofficial action because of the potential legal consequences. Isolated incidents of unofficial action have broken out, particularly on London Underground where there exists a high degree of militancy. Where unofficial action continued for any length of time this led to the union leadership organising an official ballot for industrial action. The law has in this context definitely acted to constrain union behaviour.

On the theme of unlawful industrial action, an ASLEF national official observed:

> The law means the union has to proceed with extreme caution when calling industrial action. The union has to be vigilant not to break the law on balloting or picketing. This can cause differences of opinion to develop between senior officers, local officials and lay members. The latter may want to act quickly, the former only when the legal requirements have been completed since precipitous action can have dire legal consequences for the union. In many unions the law has acted to strengthen the national leadership of unions. This was largely because of the necessity of controlling the process surrounding strike ballots in order to avoid expensive legal errors.

Finally, in respect to ASLEF the union has found that as a result of privatisation shop stewards now have a more significant role in the negotiating/industrial relations process. This has meant such officials need to be briefed on the legal process involved in calling industrial action. Privatisation of the railway industry meant ASLEF had to make alterations to its constitution. The union had to deal with different train-operating companies and adapt its structure accordingly. A new bargaining unit was created in the form of company councils. This reflected the shift from national bargaining to company-based single-table bargaining. ASLEF introduced annual direct elections to company councils. Since it is this body which is now responsible for engaging in the negotiating process, senior officials at head office who previously performed this role in national bargaining have seen responsibility for bargaining necessarily more devolved to local officials. Representative structures develop around the bargaining unit, providing the membership with participative opportunities. Shop stewards, elected by members at the workplace, working alongside a national official, now lead bargaining.

In the case of the **RMT** constitutional developments were influenced by the former NUR. Under the NUR constitution, the NEC had the power to declare strikes, to order members of the union to withdraw their labour and to fix the date of such withdrawal. Following the merger with the NUS, the RMT adopted the NUR rule. The passing of the TUA 1984 resulted in the RMT introducing industrial action ballots for the first time, in the form of workplace ballots. Compliance with the

requirements of TURERA 1993 subsequently meant the union adopted the fully postal ballot method. The legal provisions relating to industrial action therefore impacted significantly on the traditional practices and procedures of the RMT. As one NEC member observed:

> The legal provisions on industrial action changed the mechanism by which industrial action was triggered and introduced a complex process to comply with for lawful industrial action to be taken.

Although the RMT felt that it had no option but to comply with the legislation relating to industrial action, the opposition the union felt towards the concept of balloting was expressed in clear terms.

> The introduction of secret postal ballots for industrial action constitutes a serious infringement of the right of union members to decide how their organisation is run and should be rejected. (national official)
>
> Unions should make their own decisions, through their own democratic structures, which have been evolved by trade unionists themselves. State regulation is not appropriate in this aspect of internal trade union affairs. (national official)

However, the antipathy to the concept of balloting did not remain and ballots came to be viewed as a positive development, as is apparent from the following statements:

> The RMT believes in taking a firm stance in the protection of its members. You will obtain more concessions from the employers if the members are willing to take industrial action. We've had more strike ballots than the rest of the trade union movement put together and we've never lost one. (Bob Crowe, General Secretary, RMT)
>
> Secret ballots for industrial action have enabled the RMT to demonstrate the support amongst members for the policy being pursued. It validates the position adopted by the leadership. It sends out a clear warning to employers that the membership is behind the union stance. The union leadership have selected their balloting occasions carefully. (shop steward)

The law surrounding the balloting process did however introduce potential pitfalls, of which trade unions had to be mindful in order to avoid expensive procedural errors. First, strict requirements concerning the wording of ballot papers caused the union organisational problems. In a dispute with London Underground the then NUR sent out ballot papers asking members to support the NEC in a fight to maintain a seniority agreement and to resist the imposition of organisational change. The employer challenged the validity of the ballot, claiming that the wording was misleading because although there was disagreement on seniority, no talks had been held with the union on organisational change. The High Court held that although the union could establish that a majority of its members at London Underground had expressed concern about organisational change, there was no evidence that it was currently part

of a trade dispute, and therefore the wording of the ballot paper was unlawful. The ballot had to be rerun without the offending phrase. (see London Underground v National Union of Railwaymen [1989] IRLR 341).

The legal rules surrounding the notification of employers and the cooling-off period prior to industrial action also caused the RMT problems. One shop steward explained:

> When the union was in the process of informing employers by fax of the members to be balloted for industrial action it was not unknown for the employer to switch off the fax machine. The union would then have to find an alternative method of notifying the employer within the time-limit if the ballot was to go ahead as planned.

Furthermore, the requirement for a cooling-off period after a strike ballot had been secured undermined the union, as it gave employers time to develop and implement contingency plans. It meant employers could limit the most damaging effects of industrial action. As one member, a train guard, with Virgin Trains, West Coast Line, stated: 'We have to give the employer advance warning of when and where we are going to hit him.'

The union also had injunctions awarded against it in relation to unlawful industrial action at both British Rail (Financial Times 24.7.85) and London Underground Limited (Financial Times 17.5.85). It is also apparent that the Conservative industrial relations legislation did not eliminate unofficial industrial action from the landscape, since ballots were not always held before industrial action. This was usually because at local level members would take precipitous action. One national official observed:

> RMT members at London Underground have proved rather militant. They know that spontaneous action can cause the employer real difficulties. Sometimes the old-fashioned tactics are the most effective at encouraging an employer to take a more accommodating approach.

When unofficial action took place the union hoped that the employer would not turn immediately to the law for redress. Unfortunately, employers did sometimes use the law, to the union's significant inconvenience and financial cost. When unofficial action became more frequent or persisted this eventually led the union leadership to organise an official ballot for industrial action (Darlington 2001: 10). However, despite the above problems, the fact that postal ballots increased the financial costs of calling industrial action, and that ballots may have contributed to a fall in the level of

industrial action within the industry, the union adapted them into their armory. One national official stated:

> The RMT has become selective in their use, only calling a ballot when they are confident of a 'yes vote'. The union views them as an important weapon against employers, as a barometer of membership opinion, and as an important way of legitimating their actions and galvanising support amongst the membership.

Whilst the balloting process secludes the member from the collective voice when actually casting their vote, the union has forcefully retained the influence of collectivism. This has been done through a variety of institutions and processes. As a national official explained:

> Prior to the vote both regional councils and branches will hold meetings and events to get the union message across and distribute propaganda. Members also receive a preliminary letter setting out the background to the dispute and supplements, when thought necessary, to home addresses. In addition the union newspaper, the RMT News, and organization-specific magazines, (for example, Virgin Train staff have their own magazine for RMT members) communicate the union's position to the membership.

As another national official put it:

> The RMT has retained collectivism at its heart; individuals need to be members of a collective organisation for their own protection.

Another factor that impacted on the union in the area of industrial action and collective bargaining was industrial change. One national official described privatisation of the rail network as 'a logistical nightmare that necessitated the union embarking on substantial organisational reform'.

The union went from dealing with a single employer, British Rail, to 25 train operators, Railtrack and many small maintenance companies. This had severe implications for the collective strength of the organization. This manifested itself in several different ways. First, bargaining became fragmented. Second, new relationships had to be developed with employers, introducing the risk of de-recognition, although there has been none to date. Third, there was a reduced role for the activist member as it was not always possible to get such members involved during a period of industrial action. One shop steward explained:

> A dispute may be based at stations owned by Railtrack. However the most useful RMT activists may be employed by a train operator or maintenance contractor not party to the dispute.

As for ASLEF, privatisation of the rail network meant the union was confronted with the introduction of new collective-bargaining machinery. This required the formation of company councils for collective bargaining purposes. The RMT holds direct elections to company councils annually. Since it is this body that is responsible for engaging in the negotiating process, senior officials at head office who previously performed this task have had the responsibility prised from their grasp. The bargaining is now led by negotiators elected by members at the workplace, who work alongside a national official. The national official provides advice on bargaining strategy and the law.

Prior to the new legislation the **TGWU** rule-book provided that the general secretary held the power to call industrial action. This was usually preceded by a show-of-hands vote at the workplace. As one shop steward noted:

> For the TGWU balloting was a major change in practice the union had no real experience of formal ballots before strikes. It was a case of 'hands up, all those in favour'. The legal requirements took the union some time to get to grips with. It encouraged senior officials to manage the process of calling industrial action.

The TGWU was particularly critical of the requirement to hold only postal ballots. The attitude of the TGWU to postal balloting is illustrated in the following statement, made by a national official:

> The abolition of workplace ballots ended the direct role of the union branches and shop stewards in key decisions and participation declined. The turn-out in industrial action ballots carried out at the workplace was around 34 per cent. In contrast the turn-out using the postal ballot was around 15 per cent. The introduction of secret postal ballots was nothing to do with democracy, but simply aimed at reducing the ability of trade unions to take lawful industrial action. It was a disgraceful and indeed undemocratic move by government.

The TGWU was one of the first unions to be subject to legal action for failing to hold an industrial action ballot in accordance with the TUA 1984. The TGWU negotiating team was in dispute with the Austin Rover Group over pay and conditions. Shop stewards organised a mass meeting at the workplace and the majority voted by a show of hands for industrial action. The Rover Group pointed out to the union that a ballot should have been held under the terms of the 1984 Act, and subsequently issued a writ. The union was advised that unless it repudiated the actions of the officers

concerned, ordered the men back to work, and insisted on a ballot being held they would be liable for monetary damages (Executive Minutes 1984, para. 903, p. 216).

The general secretary of the union and the NEC agreed that the union had no alternative but to comply with the legal requirements. However, the union acted too slowly and had a £200,000 fine imposed upon it. This demonstrated to the union its vulnerability in the event of unlawfully balloted or unofficial industrial action. One national official observed:

> Senior officials fear contravention of the law or a court order and make stringent efforts to ensure compliance with the law. It is easy in the process of conducting a strike ballot to make procedural errors that can prove expensive. The TGWU tries to curb outbreaks of unofficial action. In many ways unofficial action is a thing of the past for members of this union.

However, the interviews with national officials and shop stewards revealed that the efforts taken to ensure legal compliance with the balloting requirements and to prevent unofficial action could cause unease between senior officials, the lay membership and shop stewards. One national official observed:

> When senior officials are seen stopping industrial action members wonder what the hell the leadership is doing telling them not to take action. Members accuse the union of taking the side of management. The members' reaction is largely born out of frustration from being restricted in the action they can take in response to the employers' position. However, they generally appreciate that the union leadership are in a difficult position being faced with a hostile legal environment.

Overall, the original negative perspective of balloting changed. The union recognised that the holding of a ballot could provide advantages for the position of the union when members voted in favour of industrial action. Thus, as one shop steward stated:

> The union movement has to admit that secret ballots have proved popular with both members and officials. Members are given a direct say in industrial action, and the union has a method of demonstrating the collective mood of the union to the employer.

However, the TGWU did find that the detailed requirements relating to the balloting process needed careful scrutiny. Great care had to be exercised in respect of the wording of the ballot paper and the conduct of the ballot. For example, section 229 (3) TULR(C)A 1992, provides that the voting paper must specify who is authorised to call union members to take part in industrial action. Only those specified can take the decision to call industrial action, otherwise the action will be unlawful. In one case the TGWU held a ballot for industrial action and a substantial majority voted in favour. The general secretary was asked by the regional official for permission to call

industrial action. The general secretary gave his permission, and a strike was called after a breakdown in negotiations. The employer claimed the action was unlawful because the strike call came from the regional official rather than the general secretary. The case went to the Court of Appeal, who dismissed the employer's claim (see Tanks and Drums Ltd v TGWU [1992] ICR 1).

In the TGWU the introduction of balloting resulted in a centralisation of decision-making by senior officials. Head office issued detailed instructions on the conduct of the balloting process to local national officials and shop stewards. Consultation with head office was required before these officials took any action. The instructions issued by head office were ardently followed by these officials to ensure that the union was not subjected to legal action. This eroded the discretion previously held by local officials (Hyman 1983). The following quotes demonstrate the view of shop stewards on this issue:

> Balloting did not improve union democracy it resulted in the centralisation of power within the union at the expense of lay officials. The leadership responded to balloting legislation by increasing their control over the activities of local officials and branches. (shop steward)

> In the TGWU shop stewards always used to play a key role in the decision-making process surrounding industrial action. I think this has been lost since the introduction of industrial action ballots. The TGWU leadership have centralised decision-making for understandable reasons. (shop steward).

The overwhelming feeling from shop stewards evident from the interviews was that balloting had strengthened the power of senior officials. Head office determined when ballots should be held, developed control over the balloting process and monitored more closely the activities of local officials and branches. However, the research did not unearth any evidence to suggest that these developments were instituted by the leadership deliberately to undermine the power of local officials. Indeed, union leaders appreciated that such officials were often the key to local branches with a strong power-base. These officials often controlled the activities of members and ensured internal rules, procedures, practices, processes and structures were upheld (Irvine 2001). Rather, the centralisation by the leadership was a result of concern to protect the union from legal liability for breaches of the law.

The **EETPU** adopted rules specifying postal balloting procedures for the calling of industrial action in 1960. However, following the introduction of the TUA 1984,

which allowed the use of workplace and postal ballots, the EETPU dropped their commitment to the postal voting method. In practice, the policy of holding postal ballots for industrial action was maintained throughout this period, despite the absence of rule-book provision to this effect. As one national official explained:

> The reason for this was that the individual members expressed a wish to hold secret postal ballots rather than workplace ballots.

However, the EETPU resurrected the requirement for a postal vote following the introduction of TURERA 1993, which required such ballots must be conducted by the fully postal method. The EETPU and other craft unions have had a strong commitment to the principle of balloting on industrial action. As one shop steward put it:

> Industrial action ballots were unpopular with traditionalists because they thought it fragmented the individual from the union and they had to rethink how they dealt with collective bargaining. It forced unions to use the strike weapon more tactically, since members had a choice, it set the member against the union. It had a significant impact on big general unions and the way they behaved.

However, whilst strongly in favour of holding strike ballots, the EETPU was highly critical of the legalistic rigidity caused by the associated rules which surround the balloting process. Several national officials interviewed expressed concern about the practical difficulties associated with balloting. Negative comments focused on the complexity of the provisions. For example:

> The rules relating to the conduct of ballots are excessive designed to deliberately trip up trade unions when calling industrial action. The requirement to include an 'industrial health warning' on a ballot paper was simply designed to frighten union members into voting against industrial action. It had nothing to do with democracy. (national official, Electricity)

> The technical balloting requirements mean trade unions can easily end up in breach of the law. The whole process was designed to make it more difficult for trade unions to call industrial action; it has nothing whatsoever to do with union democracy as far as I can see. (national official, Engineering)

> The union established its own legal department to manage the balloting process and ensure compliance with the legal requirements. The balloting process is tightly controlled by the central organisation of the union. (national official, London Electricity)

The EETPU leadership were concerned about the technical legal requirements of the balloting process and the legal constraints on balloting. It was determined that national officers should become more involved in workplace organisation and collective bargaining. It was reported to have provided an opportunity for national officers to exert authority over local activists by demonstrating their expertise in this

area of the law (Undy *et al.* 1996: 209). The then EETPU identified a senior national officer to take responsibility for and exercise control over all industrial action ballots. In this respect the legislation was said to have acted to undermine its stated aim of increasing democracy within the union. In respect to the EETPU, the legal requirements pertaining to industrial action increased the centralisation of the bargaining process in an already centralised system. This resulted in national officials being made responsible for conducting negotiations with employers. This caused some resentment and tension between more moderate senior officials and the more militant activist. In the view of one shop steward 'power has been taken from local officials and transferred to senior officials'. Another shop steward noted:

> Sometimes these lead officials do not even bother to consult local officials they just act and sod everyone else. They mechanically implement instructions given to them by the NEC or general secretary. The decision by head office to centralise further the bargaining process unleashed some degree of discontent amongst lower level officials.

The evidence from the interviews conducted with the rank-and-file members and shop stewards of the EETPU was, however, that they were firmly in favour of industrial action ballots.

> Ballots take the sting out of a strike decision; no wildcat strikes, stewards and the union are looking for the best agreements they can get. (shop steward)

> The EETPU adopted industrial action ballots in the 1960s. The ballot got rid of all that ridiculous walking out stuff. The senior steward and committee used to try and dictate to the workforce the action to be taken. The ballot took this power away from shop stewards and killed off precipitous action. The action taken is now more considered and democratic. The union shop steward informs members at workplace meetings and the members then have the final say through the ballot. This is the way a democratic organisation should operate. (shop steward)

> The imposition of industrial action ballots got rid of the mass meeting. The EETPU never acted in that way, however many other traditional unions did, particularly TGWU in the car industry so it really affected them. It removed hand up votes and placed reliance on the members. Members can still be influenced but under this system the union becomes more of a facilitator. (union member)

However, on a more pessimistic note, several senior officials of the EETPU reported that turn-out for industrial action ballots was falling. One national official explained:

> It is possible that because members are being balloted on such a range of issues they are now starting to suffer from what might be termed 'ballot fatigue'. Postal ballots have added to this problem. Workplace ballots enabled local officials to encourage individual members to vote. This involvement has been lost with subsequent legislation.

NATFHE had a long history and proud tradition of holding industrial action ballots, prior to the introduction of the new Conservative legislation. They were viewed as

important in maximising involvement of union members. As one national official explained:

> The union tradition of using industrial action ballots dated back to the early 1970s. However, the balloting process was quite informal, usually organised and conducted at local branch level rather than at national level, although this was at the discretion of the union leadership.

Despite the fact industrial action ballots were nothing new to NATFHE, the legal requirements attached to the balloting process had a major impact upon the union. The previously informal rules on balloting were replaced with detailed provisions implementing in full the legal requirements. It also caused the centralisation of decision-making in the domain of industrial action in an attempt to ensure the union acted within the law. Head office issued detailed instruction notes pertaining to the process for invoking industrial action and expected these to be followed by local officials. The role of national officials was enhanced, providing advice and information to local officials. One national official observed:

> Balloting contributed to increased centralisation of decision-making in NATFHE, taking power away from local officers. This has made unofficial action very rare. This formalisation of process was very much driven by the leadership and the executive. The leadership are understandably concerned about breaching the law.

Another national official observed:

> Postal balloting distances the member from the issues of the workplace. Workplace ballots enabled local officials to place pressure on members to vote in favour of industrial action and keep the issues at the forefront of the memberships mind.

However, despite the increased centralisation, one branch official observed that the use of ballots could sometimes be ignored at local level. The branch official explained:

> Four branch officers were suspended at a college without pay a majority of the membership walked out in support immediately without a ballot being held. The dispute was resolved as a result of talks held between college management and local officials. These instances are extremely rare. In fact I cannot think of another example.

NATFHE has, however, experienced considerable difficulties in complying with the Conservative legal requirements relating to balloting. The definition of balloting constituencies caused the union considerable problems, which often gave rise to legal complexities and, indeed, caused the union to become embroiled in a technical legal action Blackpool and Flyde College v NATFHE [1994] IRLR 228. NATFHE was in dispute with the College over the introduction of flexible contracts for new members

of staff. The union gave notice to the College of its intention to ballot 'all members in your institution' on industrial action. The employer argued that this was not sufficiently precise to enable it to ascertain those employees who would be entitled to vote and take part in the action, as required by s.21 TURERA 1993. The evidence was that the College had been told by the union that approximately one-third of the 872 lecturers were union members. The College knew the identity of 109 of these members because they paid their union subscriptions by check-off arrangements. The Court of Appeal held that the union's notices were not sufficiently precise to enable the employer to identify the remaining members, and accordingly granted an interlocutory injunction. On the facts of this case, the union could identify those remaining members only by naming them individually. (The Labour government elected in 1997 amended the law so that specific names of union members do not have to be disclosed (s.226A(2)(c) Employment Relations Act 1999). The operation of the 1999 Act amendment is discussed further in section 5.3.1 below).

The further-education sector presented the union with the most difficulties. As one national officer explained:

> The employers used the law in such a way as to make national industrial action impossible and make the balloting process extremely lengthy.

The agencies involved in the operation of further-education institutions obtained court support for the view that disputes were not between the union and the National Association of Colleges, but the union and each individual college management board. One national official explained:

> This made it extremely difficult to coordinate national industrial action in the sector. In addition, the balloting process meant that it took 7 to 8 weeks to enable one individual college to engage in lawful industrial action. The employers' willingness to use the legal provisions meant the union was highly restricted in its approach to industrial action. Indeed, the view amongst union officials is that it has been a recipe for disaster in respect of the organisation of collective national industrial action.

In contrast to the experience in the further-education sector, the union has not been faced by such difficulties in respect to higher education. In the higher-education sector the union has since 1992 had a tradition of industrial action combining action short of strike and short strikes. The approach of employers has been of significance in the HE sector. One national official stated: 'they have not used the law in an attempt to undermine national industrial action'. However, in the 1996 dispute the

University of Central England had to be pulled out of the national ballot, as the Principal said he would challenge its validity.

Thus, in the context of industrial action the union has been divided. In respect to higher education collectivism has been retained, because of the retention of national collective bargaining and the fact that the employers have so far been unwilling to use the law in a restrictive manner. In further education the contrast could not be more pronounced. The employers have refused to carry on national bargaining, making negotiations much more complex and challenging the link between the union at local and national level. In order to ensure control from the centre, national officials lead bargaining teams at local level. However, as a national officer stated:

> Management offensives against staff at further-education institutions frightened the membership, making them reluctant to take part in industrial action. As a result we have experienced several 'no votes'.

The hostile attitude of management towards employees and the employer's use of the law have had a devastating effect. They have rendered NATFHE virtually impotent in the further-education sector. NATFHE can be contrasted with the majority of other trade unions in this respect. In the further-education sector NATFHE has been unable to use industrial action ballots as a weapon. The abolition of national bargaining, with negotiations taking place between the management of individual colleges and branches, means that national structures have been ostracised from this domain. As one national executive member put it:

> It has proved extremely difficult for the centre to dictate or influence negotiations, or to be instrumental in the organisation of industrial action within the sector.

Historically, the **CPSA** has not often resorted to industrial action. In fact one national official explained:

> The union only instituted a strike policy in 1969, and although constituent sections of the union then engaged in selective industrial action at regular intervals over the next twenty-five years, the level of coordinated national strike action was relatively low. Members of the CPSA have always been fairly moderate in their approach to industrial relations and have not been renowned for their industrial militancy.

Thus, between 1970 and 1995 the union's members took part in nationally coordinated action on only five occasions: 1973, 1978, 1981 and twice in 1987 (Fosh and Morris 1996). During the 1980s and early 1990s the then leadership of the CPSA was strongly in favour of the use of secret ballots prior to strike action. The union

therefore complied with the Conservative legislation, introducing the concept of secret postal ballots into its constitution. However, this strategy was not without its problems. One national official explained how, in 1985, the policy of balloting on industrial action rebounded on both the leadership and the left of the union.

> The leadership recommended a campaign of industrial action, after strong and concerted pressure from broad-left activists who advocated such a policy. However, they were forced into an embarrassing climb-down when the membership voted against the proposal in the subsequent secret ballot.

The policies advanced by the left were rejected by the membership through postal ballots, which seriously undermined the credibility of the broad-left position. Another national official observed that:

> During the 1980s and 1990s the leadership of the union were constrained in their actions by the unpredictability of the views and moods of a transient membership.

Another factor that made it more difficult for the CPSA to obtain 'yes votes' in favour of industrial action was the organisational change that took place in the Civil Service due to the implementation of privatisation, contracting-out and market testing. These changes seemed to have a detrimental impact on the willingness of employees to engage in industrial action. One national official observed:

> Management initiatives and attitudes during the 1980s and early 1990s frightened the membership making them reluctant to engage in industrial action. The membership became concerned about future employment prospects. Against this background it became difficult to mobilise the membership to take the necessary collective action to challenge management decisions. If one thinks about the context of the time this is not really a surprising response by the membership.

The end of central Civil Service pay-bargaining changed the level at which negotiations took place. This caused more resources to be introduced at departmental level. However, although there was day-to-day autonomy at local level the bargaining agenda and approach was controlled by the centre.

The subsequent rise and dominance of the moderate/right-wing grouping also resulted in a reluctance to engage in industrial action. Indeed, the centralised decision-making meant the leadership rarely called a ballot. Interviews with national officials also revealed that the introduction of Conservative legislation on industrial action encouraged local officials to become more considered in their actions. As one of them put it:

> Industrial action ballots have altered the behaviour of the more militant member. Prior to the Conservative legislation they were free to act in their own way. The law encourages the membership to be more tactical and thoughtful. They are reluctant to commit breaches of the law because they know it could have serious legal consequences.

However, the union would not ballot for strike action in the way specified by the legislation because, as one national official explained:

> The legal requirements are excessively technical and make it extremely difficult for trade unions to act within the law. In addition the whole trade union movement must be concerned about the turn-out in postal balloting. Membership participation in ballots is low and this is not really acceptable. Trade Unions are making proactive efforts to encourage members' to vote (not just communicating with members' through traditional methods but also through electronic methods). The union movement wants the opportunity to use a range of voting methods in an attempt to improve membership turn-out. I think this demonstrates how open minded unions are and their willingness to change and adapt to changing circumstances.

The technical requirements surrounding the industrial action balloting process imposed by Conservative legislation did provide the union with some specific difficulties. This is evident from the fact that the union has been threatened with injunctions on several occasions and has had an injunction awarded against it for failing to hold a lawful industrial action ballot in the Civil Service.

5.2.1 A Summary of the Impact of Secret Ballots for Industrial Action

Prior to the introduction of Conservative legislation, each of the case-study unions had its own method for the calling of industrial action. This had been part of their respective constitutions for many years and could be located in the rule-book. Since the introduction of Conservative legislation all but the BFAWU have moved towards a system of strictly secret postal ballots. The Conservative legislation in this respect effected a direct change in the practices and procedures of the case-study unions (see Table 5.1).

An analysis of interviews, conference reports and NEC minutes revealed a significant shift in the attitude of ASLEF, the RMT and the TGWU towards the concept of balloting before industrial action. At the time legislation on industrial action ballots was introduced, and for several years after, the stance taken by officials and members in these unions was confrontational. Activists argued for the retention of the status quo, for disobedience and for the refusal to pay fines levied on the union for failure to comply with legislation.

This fighting stance has gradually ebbed away, to the extent that the principle of holding a secret postal ballot before industrial action is now taken for granted in all cases. The case-study unions came to view industrial action ballots as a weapon that could be used against employers, as a barometer of membership opinion, and as an important way of legitimating their actions. Indeed, the following statement by John Monks (the then General Secretary of the Trades Union Congress), made at the ASLEF annual conference sums up the current position on the concept of industrial action ballots:

> It must be recognised that such laws have proved popular. No union leader would dare go anywhere near a group of workers and say we are not having ballots before strikes. The fact is that prior to the introduction of the legislation many unions did not have them before; no one can take that away from what the law achieved (ASLEF Conference Proceedings 1999).

However, while the majority of trade unions have found it necessary to comply with the law surrounding balloting, it has not resulted in members of some of the case-study unions voting in a necessarily more moderate direction (Brown, Deakin and Ryan 1997; Darlington 2001). The members in the BFAWU, ASLEF and the RMT did not seem more inclined to vote to avoid confrontation with employers and, in so doing to take a less conflictual and more accommodating stance. To date, the BFAWU, ASLEF and the RMT have never lost an industrial action ballot that they have called. ASLEF and the RMT have in particular been trade unions that have been associated with a high profile for militancy since 1999 (Darlington 2001; Bradley and Leach 2003). Moreover, the experience of the BFAWU, ASLEF and the RMT is that whilst the balloting process isolated the individual member from the collective voice when casting their vote, this could be countered by their union nurturing collectivism through other means of contact with the membership (such as meetings) in advance of the ballot. Senior officials and local officials would campaign vigorously to obtain support for collective action. Shop stewards would address specially organised union branch meetings and distribute leaflets in attempt to orchestrate support for a 'yes vote' in industrial action ballots. The comments of several national officials and shop stewards interviewed indicated support for the concept of industrial action ballots and enunciated some of the positive aspects of the balloting process for trade unions:

> Prior to the introduction of the legislation on secret ballots it was easy to argue that militant union leaders were out of touch with those that they represent. The leadership could be accused of leading their flock astray, forcing members to engage in industrial action. This can no longer be claimed. The evidence is in the ballot result. (national official, TGWU)

> In the rail industry where a ballot was in favour of industrial action it encouraged employers to the negotiating table to make a better offer. (national official, RMT)
>
> Industrial action ballots strengthened the relationship between national officials, shop stewards and the membership making it more cohesive. In a sense it has made employers more vulnerable to the collective voice of the union. (national official, RMT)

However, the legal provisions pertaining to industrial action have caused the case-study unions some difficulties. The pre-industrial action ballot procedures were complex, cumbersome and costly. It has been remarked that the Conservative balloting legislation was 'fragmented, complex, often unpredictable and sometimes unprincipled' (Deakin and Morris 1998). All the case-study unions, except for BFAWU, have had injunctions granted wholly or partially against them for infringements of the balloting process. This resulted in strikes involving the case-study unions being called off or delayed (Elgar and Simpson 1993; Undy *et al.* 1996; Brown, Deakin and Ryan 1997; Elgar 1997).

The legalistic nature of the rules resulted in the EETPU, TGWU, NATFHE (higher education) and the CPSA introducing procedures which increased centralisation of the bargaining process in an area of union operation that was previously far more decentralised. This development raises issues of 'democracy' in relation to Conservative objectives, which are discussed further in section 5.3.1 below and in chapter 7.

5.3 Conclusions

5.3.1 Industrial Action Ballots and Changes to Trade Union Procedures

The Conservative legislation requiring secret ballots prior to industrial action resulted in some significant changes to union procedures. Firstly, the duty to hold a secret ballot prior to engaging in industrial action had far-reaching implications for some trade unions. The legislation required fundamental changes in ASLEF, the RMT and the TGWU in order for these unions to successfully avoid litigation. In these three unions the power to call industrial action originally lay with the executive. Furthermore, in ASLEF, the RMT and the TGWU there was no duty on the executive to consult the union membership before undertaking strike action. Thus these unions, which either had no requirement for an industrial action ballot or, at the most, limited provision to do so, were required to make important changes in order to bring their procedures into line with the legislation. As we have seen, the RMT, TGWU and

ASLEF all eventually took the necessary steps to bring their arrangements into line with legal requirements.

Secondly, some unions which did ballot their members were also required to make changes at various junctures in order to bring their procedures into line with the requirements of legislation. NATFHE, for example, traditionally held branch votes. When the TUA 1984 was introduced it moved to secret postal ballots. In respect of the CPSA, the union had traditionally held sectional ballots. On the introduction of TUA 1984 it also adopted secret postal ballots. In respect to the EETPU, the union traditionally used secret postal ballots. It moved to workplace ballots on the introduction of TUA 1984, but reverted to postal ballots on the introduction of TURERA 1993. The BFAWU traditionally used secret postal ballots. However, since 1984 it has used a mixture of workplace and postal ballots, the workplace ballots now being held are in contravention of the legal requirements.

Third, the case-study unions encountered a number of challenges, relating to the holding of industrial action ballots and the law surrounding them. A major problem was the inflexible and technical nature of the balloting rules with which trade unions needed to comply. The complex legal requirements meant trade unions could easily fall foul of the law hampering their ability to call industrial action lawfully. This viewpoint was most prominently expressed by officials in ASLEF, the RMT, the TGWU, the EETPU and NATFHE. The complex nature of the law also provided opportunities for employers and dissident members to challenge the balloting process (Elgar and Simpson 1993).

The legislation resulted in all the case-study unions, with the exception of the BFAWU, laying down detailed procedures on the process of organising industrial action. Senior officials of trade unions sent out the message to lower-level officials and committees that if the advice was not followed, it was impossible to comply with the law and organise a lawful and effective campaign of industrial action. Due to the technical nature of the balloting process, shop stewards needed support and guidance from national officials and legal officers.

However, this did not automatically result in the centralisation of the bargaining process in trade unions. The BFAWU, ASLEF and the RMT decentralised bargaining, increasing the power of shop stewards. These developments can be explained by various contextual factors, including: internal reform of union government, leadership policies and changes in the arrangements for collective bargaining. In contrast, in the TGWU, EETPU, NATFHE and CPSA the leadership introduced measures to increase central control of the bargaining process. This centralising of the bargaining process was most prominent in the TGWU and EETPU, and had some important implications for union operations. The procedures introduced by these unions tended to centralise decision-making, enabling senior officials to control the number of ballots held, the balloting procedure and the bargaining process. This centralisation of power sometimes undermined the traditional autonomy of local officials. The centralisation that occurred might be regarded as somewhat surprising. This is because during the period under review the level of pay bargaining became more decentralized, in response to employer-led policies.

In the TGWU, EEPTU and CPSA, whilst the level of pay bargaining was devolved, the strategy, tactics and sanctions adopted were controlled by the national leadership. This was viewed as necessary in order to ensure consistency in representation amongst trade groups, to reduce the possibility of 'maverick' local officials embarking on a bargaining agenda of their own, and to ensure compliance with legal requirements in respect of balloting. The latter was regarded as important not only in a strict legal sense, but also to safeguard the financial position of the union, since balloting and legal sanctions could be costly. At a time when trade unions were faced with financial difficulties associated with membership decline this caused the leadership of the TGWU, EETPU and the CPSA to be very sensitive to the balloting legislation (Undy *et al.* 1996: 228). The changes that occurred within the respective trade unions can therefore be explained by the fact that each union was starting from a different contextual base.

The technical nature of the balloting rules, the financial expense of the balloting procedure, the pressure management could place on employees not to engage in

industrial action, and the ability and willingness of employers to challenge perceived breaches of the balloting process were emphasised as harmful consequences for trade unions of the requirement to ballot on industrial action (Brown and Wadhwani 1990; Elgar and Simpson 1993; Undy *et al.* 1996; Elgar 1997). These administrative and legal factors acted as centralising pressures, promoting oligarchy within some trade unions and subverting democracy. This was contrary to the Conservative rhetoric that the legal measures surrounding industrial action balloting were designed to increase democracy (Democracy in Trade Unions 1983).

In the Employment Relations Act 1999 the Labour government elected in 1997 attempted to relax and simplify some of the more complex and controversial provisions of the Conservative measures on balloting. However, in some ways, the attempt to simplify the law in the Employment Relations Act 1999 has made the law even more complex and burdensome. This can be illustrated by examining the development of the law pertaining to the written notice requirements relating to the holding of an industrial action ballot.

Conservative legislation required a trade union to give employers seven days' written notice of any ballot. The union had to include in the written notice a description, 'so that the employer could readily ascertain the employees of his/her who it is reasonable for the union to believe ... will be entitled to vote'. To comply with these provisions, the union had either to specify a readily identifiable category of persons who were union members (so the employer could easily find out who they were) or, if that was not possible, the union had to provide a full list of individual names (Blackpool and Fylde College v NATFHE Ibid).

The Labour government amended the law to ensure that the specific names of union members would not have to be disclosed to employers by unions (s.226A(2)(c)) Employment Relations Act 1999 (ERA). In achieving this objective, the ERA 1999 also changed the definition of the information which the union should disclose in notices. Notices should contain, 'information in the union's possession which would help the employer to make plans and bring information to the attention of his employees involved'. Additionally, where the union possesses information as to the

number, category or workplace of the relevant employees, then the notice must contain this information.

There is evidence that the above requirements have made the law more burdensome for trade unions. In London Underground v RMT 2001 IRLR case, the Court of Appeal interpreted the provisions as requiring unions to attach detailed matrices to their notices identifying the number and grade of their members at each workplace involved in the dispute, a task which can be difficult to execute where membership turnover is high or where members are often re-deployed to different workplaces. The disclosure of such detailed information was not always necessary under the Conservative legislation (DTI 1993: 68). As a result of the problems identified in the current legal framework the Labour government have stated:

> The law on notices is complex and gives rise to costly legal actions on minor points of law. In some ways, the attempt to simplify this law in the 1999 Act has made the law even more complex and burdensome. This was not the intention. The government proposes to make various changes to the law to ensure that simplification is achieved.
> (Review of the Employment Relations Act 1999, paragraph 3.28: 69).

However, whilst the Labour government proposes to relax the law pertaining to industrial action notices and extend the ability of the courts to disregard small accidental failures to comply with all the technical requirements of the law, the government has reaffirmed its commitment to maintain the essential features of the pre-1997 law on industrial action (Review of the Employment Relations Act 1999: Government Response to the Public Consultation, paragraph 3.19: 43).

Overall, the case-study trade unions appeared to have coped with the legal, financial and administrative burdens surrounding industrial action ballots.

5.3.2 Industrial Action Balloting and Trade Union Decision-making

Although the legislation caused specific, substantive changes to union practices and procedures, it is evident that the legal provisions did not necessarily produce more moderate decision-making by the membership. Indeed, the behaviour of members was often unpredictable and linked to union-specific developments, the economic environment and political circumstances (Brown and Wadhwani 1990; Elgar and Simpson 1993; Edwards 1995; Dunn and Metcalf 1996; Brown, Deakin and Ryan 1997; Elgar 1997). In workforces which held a significant and well-rooted union

presence, balloting increased the union's bargaining position on any given issue. The reality is that the majority of case-study unions found that industrial action ballots have not been as damaging as originally feared. It is apparent that ballots have assisted trade unions in both their negotiations with employers and their relations with the majority of their own members. Trade union officials and representatives across all levels asserted that balloting improved the negotiating position of trade unions. In situations where industrial action did take place, holding a ballot was seen to consolidate membership support-ballots bolstering collectivism and underpinning collective decision-making. Where industrial action did not take place it was often claimed, by union officials from both ASLEF and the RMT, that ballots provided an opportunity for a dispute to be brought to an end through the negotiating process. Since the union had obtained a 'yes vote' in a ballot in favour of industrial action, the ballot demonstrated the strength of feeling and evidence of membership willingness to take strike action, which prompted a more accommodating stance from the employer and resolution of the dispute. This observation is supported by the findings of Auerbach (1990: 120);

> If ballots resulted in strike action not taking place, this was seldom because 'moderate' members had overturned the recommendations for action of more militant leaders, but more often because a 'yes vote' in a ballot proved to be an effective negotiating tactic for union officials, assisting them to obtain a satisfactory settlement without the industrial action going ahead.

The evidence from the case-study unions was that industrial action ballots have become an established part of the industrial relations scene, with the majority of ballots involving the case-study unions producing votes in favour of industrial action (Martin *et al.* 1996; Elgar 1997; Bradley and Leach 2003). However, in two unions, NATFHE (further-education sector) and the CPSA, officials reported that members had voted against industrial action on more occasions than they had voted in favour. In respect to NATFHE, hostile action by employers resulted in the membership voting against industrial action, whilst in the CPSA the unpredictable voting behaviour of the membership meant the leadership found their call for industrial action rejected. The above might suggest that ballots could be used more strategically by the old blue-collar sector than by white-collar unions.

In terms of obtaining a 'yes vote' in industrial action ballots and fostering the necessary 'collective spirit', it was evident from the fieldwork that pre-meetings and

consultation were vital. This enabled officers to avoid situations in which a vote against industrial action would have been particularly damaging. One national official from ASLEF commented: 'a ballot was not held because the members indicated a lack of support for the action'.

The majority of case-study unions greeted industrial action ballots negatively on their inception. However, whilst there is no doubt from the evidence that the balloting requirements have caused substantive changes to the practices and procedures of trade unions, the fear of ballots, so deeply embedded in the rhetoric of union debate, turned out to be somewhat misplaced. The notion that a moderate majority would automatically surface and that they would prevent the union embarking on industrial action has proved illusory and chimerical (Fatchett 1992: 326). Moreover, the majority of the case-study unions have accommodated the law into their processes, and have used them to legitimise their practices procedures and behaviour. The industrial action balloting process enhanced the collective voice of those in favour of engaging in industrial action. Industrial action ballots have now become an accepted and integral aspect of union decision-making.

Chapter 6 -Trade Unions and their Members: The Enforcement of Statutory Rights

6.1 Introduction

Previous chapters have detailed how the Conservatives sought through the use of balloting to increase the degree of control trade union members had over their unions. In addition to the use of secret ballots, the Conservatives also extended the regulation of trade union affairs in two further ways. First, trade union members were provided with statutory rights of membership and discipline. These personal rights, if infringed, enabled individual members to make a complaint to an employment tribunal for compensation. Second, individual members were encouraged to complain about breaches of internal union government to the High Court, with the assistance of the Commissioner for the Rights of Trade Union Members (CROTUM), or directly to the Certification Officer (CO). These irregularities could involve breaches of statute or rule. As a result of these initiatives, trade union members had in *potentia* a much wider degree of control over their unions than previously existed under the common law, through the rule-book or through the application of the rules of natural justice.

Providing union members with avenues to enforce their statutory rights was seen as an important device to ensure trade unions complied with legal requirements. Conservative legislation relied strategically on union members for its implementation. Conservative policy was that government should not be seen to engage directly in the enforcement of trade union law. This was because it could be viewed as too confrontational by the trade union movement, sections of the electorate and the Labour Party in opposition. In this respect the Conservatives had learnt from the experiences of the Heath government in 1971. Consequently, the right of members to enforce their statutory rights by complaint to external agencies was a key plank in the Conservative regulation of internal union affairs. The chapter thus traces particular developments relating to Research Question 3. That is, it will determine the impact of granting individual members the right to complain about the internal affairs of trade unions.

The first section of the chapter evaluates the effectiveness of legislative provisions relating to union membership and discipline. The second section analyses the effectiveness of CROTUM. This is followed by an analysis of the role of the CO. The chapter concludes with an assessment of the overall impact of the various statutory rights of trade union members that the Conservative legislation introduced, and that existed untouched until 1999, when minor reforms were introduced by the Labour government elected in 1997. Comment is also made in this final section of the chapter on the initial effects of the changes to the scheme of trade union regulation introduced by the Labour government through the Employment Relations Act 1999.

6.2 Rights Relating to Trade Union Membership and Discipline

S.14 TURERA 1993 gives a union member the right not to be excluded or expelled from a trade union, except in specific circumstances. There are now only four situations in which exclusion or expulsion is permitted:

a) If the individual does not satisfy, or no longer satisfies, an enforceable membership requirement contained in the rules of the union;

b) If the individual does not qualify, or no longer qualifies, for membership of the union because it operates only in a particular part or parts of Great Britain.

c) In the case of a union whose purpose is the regulation of relations between its members and a particular employer or a number of particular employers who are associated, he is not, or is no longer, employed by that employer or one of those employers, or;

d) The exclusion or expulsion is entirely attributable to his conduct. An individual who under the union rules ceases automatically to be a member on the occurrence of a specified event is treated as having been expelled. Thus loss of membership on non-payment of subscriptions will be treated as an expulsion.

To the leadership of the BFAWU, this completely disregarded established union principles. The general secretary commented:

> Traditionally the union rule-book and the old Bridlington principles allowed trade unions to recommend that a union member be expelled from a union in a case where rival unions were in dispute over the membership of that person. This is how the position should have remained. The state has no right to interfere in such internal matters.

The BFAWU has been subject to one legal claim arising out of the provisions concerning union membership. In this case a union member, Mr Walker, resigned from the union over a disagreement about unofficial strike action. Mr Walker later re-applied for membership but the application was refused. The employment tribunal held that the union's action was an unreasonable refusal of membership.

The BFAWU were also hostile to the provisions on unjustifiable discipline, in particular the prohibition contained in s.3 (a) of the EA 1988. This prevents a union disciplining a member for failing to take part in industrial action. One national official remarked:

> These provisions were simply designed to cause tension between trade unions and their members. It was an unreasonable interference in union affairs and caused the BFAWU considerable concern.

Traditionally rule 11.46, of the BFAWU rule-book provided:

> Any group of members acting contrary to an instruction from the NEC to take industrial action will be disciplined. It is the duty of all activists to ensure that members of branches do not flagrantly disregard the will of the membership to take collective industrial action.

The NEC passed a resolution changing the wording of rule 11.46 as follows:

> Disciplinary action may be taken against any member who has by his conduct brought the union into discredit or violated the trade union rules.

Thus, the BFAWU retain the right to discipline members for contravening union policy, but the overt reference to industrial action has been removed. A trade union can still discipline a member for acting contrary to union policy provided it does not relate to a failure to take part in industrial action (Fire Brigade v Knowles [1996] IRLR 337). In contrast with their approach to other areas of the law except for the political fund, the BFAWU altered their rule-book to comply with the law. The reason for this was that the union had experienced disputes in the past where some members had failed to take part in industrial action and had been disciplined. Given

that the Conservative legislation vested the member with the right to complain to an employment tribunal in order to seek financial redress, the union felt that there was a considerable risk that an aggrieved member might pursue such a case. The 'carrot of compensation' was regarded as too appealing for some members to resist.

ASLEF were also critical of the restriction placed on disciplining strikebreakers. One shop steward commented:

> Traditionally strikebreaking was regarded as a most serious offence. The change in the law was designed to undermine collective industrial action. It is nothing more than a scabs' charter.

The ASLEF rule-book originally provided that 'a member could be disciplined for failing to take part in industrial action on the grounds that it injures or attempts to injure the interests of the union'. This provision has now been deleted from the union rule-book. The rule-book was changed as a result of the legislation. An illustration of the impact of the legislation upon ASLEF is given by an industrial dispute at Connex South Central. A minority of train drivers were persuaded to sign personal contracts when negotiations broke down between the employer and the union. As a consequence of this, those drivers did not take part in industrial action. Members who participated in strike action called for the union to discipline those members who had broken ranks. The leadership countered that they were unable to take disciplinary action without being attacked by the law. ASLEF solicitors stated that 'compensation awards of around £18,000 could be awarded by an employment tribunal to any member disciplined'. The hostility to these provisions is evident in the following comments:

> The traditional rule of the union determined by the union members following democratic debate, established in the rule-book for many years, was overturned by unreasonable law and could not be enforced. It is scandalous. (shop steward)
>
> It is my experience that the law has acted to seriously undermine the collective ethos surrounding industrial disputes. This weakened the union's position. The threat of legal challenge has made it more difficult for the union to deliver the kind of traditional discipline which the union rule-book upheld, democracy marked by collective solidarity with members upholding the majority vote or facing disciplinary action for failure to do so. (shop steward)
>
> The ASLEF leadership felt highly restricted in the action that could be taken against dissident members. (national official)

The **RMT** contended that s.14 TURERA (which gives a union member the right not to be excluded or expelled from a trade union, except in four specific circumstances),

constituted a deliberate move to disturb established procedures agreed by the trade union movement concerning membership. The political officer (specialist official with responsibility for constitutional change) stated:

> Section 14 was essentially a direct attack on the Bridlington principles, devised by the TUC to avoid damaging inter-union recruitment disputes.

The RMT were also critical of the statutory rights introduced by s.3 of the EA 1988. The general secretary commented:

> Section 3 of the EA 1988 was an intrusion into trade union autonomy. It showed a complete disregard for the rule-books of trade unions and their collective ethos.

Traditionally the RMT rule-book provided that:

> It shall be the paramount duty of every member of the union to conform with a direction of the NEC to engage in industrial action or face disciplinary action.

Following the introduction of the EA 1988 this rule has now been dropped. The political officer of the RMT maintained that this provision was a 'potent attack on the traditional collective decision making practices of trade unions'. One national official stated:

> The rights of members to challenge breaches of union rule or statute have been incrementally developed during the 1980s. This was designed to deliberately set the member against the union. The fact that there has been few such cases taken by members demonstrates the law has not worked how the Conservatives hoped. The bond between the union and member remains strong.

RMT officials regarded the initiatives in this domain as a deliberate attempt to undermine the cohesive relationship between the union and its members. The union's political officer (officer with specialist responsibility for constitutional affairs) commented:

> The law reforms concerning membership, discipline and expulsion do not strike a balance between individual rights and collective needs. The inherent conflict between the rights of the individual and collective interests has been decided in favour of the individualist position.

In respect of the **TGWU** the legal officer (specialist official with responsibility for membership disciplinary proceedings) believed that the statutory rights relating to membership and discipline demonstrated the primacy given to the individual rights of members over the collective interests of trade unions. The legal officer stated:

> Section 3 of the EA 1988 contains two restrictions on trade unions that act against the collective interests of the union. First, you cannot discipline a member for refusing to engage in industrial action, even where a democratic ballot has been held with the majority in favour.

> Second, the union is prevented from disciplining a member who criticises the actions of union officials' although that official may be acting with the support of the majority of the union.

In TGWU v Webber 1990 ICR 711, an employment tribunal found that the member had been unjustifiably disciplined when he was 'suspended' by his branch and refused admission to union meetings for failing to take part in industrial action. The union regarded this intervention as a significant erosion of the rights of a trade union to determine its own constitution. The TGWU also regarded it as a 'scabs' charter. However, national officials and shop stewards suggested that although s.3 may have deterred unions from disciplining those who refuse to strike, it cannot remove the hostility that many trade union members feel towards those who have refused to engage in industrial action. One shop steward remarked:

> Deprived of the ability to discipline, union members will express their feelings directly to those who fail to engage in industrial action.

However, senior officials acknowledged that shop stewards needed to be careful when 'making life uncomfortable for a strike-breaker'. This is because s.3 (5) of the Act renders the union liable for the actions of officers. This exposes unions to a wide degree of vicarious liability.

Finally, the TGWU also reserved criticism for the restriction placed on a union disciplining a member for making allegations against a union official. The TGWU argued that the provisions gave members considerable freedom to vilify union officials. It was claimed that a union was powerless to discipline a member who had made allegations which were entirely groundless, unless it could be shown that the member knew that they were untrue or acted in bad faith. In respect to the statutory rights of members a national official observed:

> The restrictions on disciplining members greatly cut back the concept of freedom of trade unions to manage their own affairs through the rule-book.

In contrast with other unions so far examined, national officials at the **EETPU** were not strongly critical of the s.14 rights of union members, pertaining to exclusion and expulsion. Whilst making comments such as 'it is regrettable that the state has taken away union freedom to determine union rules relating to membership', they also expressed the view that some unions had 'previously treated members unfairly or had ambiguous rules'. National officials implied that there had been some bad instances

of action being taken against members in some unions, that possibly justified some form of protection for members. One national official stated:

> The EETPU has had some battles with other trade unions (particularly the TGWU) and the TUC over the recruitment of members. Arguably the freedom that members now have to decide which union to join is an advantage to a progressive modern union such as the EETPU. You have to remember the EETPU was suspended by the TUC for an alleged breach of the Bridlington principles in 1988.

However, EETPU officials viewed the statutory rights pertaining to 'discipline' in a rather different light. The rights in this domain were described as 'an unnecessary and unhelpful intrusion into trade union internal affairs'. The EETPU held the view that it was simply designed to cause difficulties between trade unions and their members and between members and members. Although the union advocated compliance with legislation, it was unequivocally hostile to the restriction on disciplining members who failed to engage in industrial action. It advocated its early repeal. The following quotes provide illustrations of the union's position on this matter:

> Members who disobey the collective decision to strike, following a secret postal ballot should be subject to a penalty for acting against the collective interests of the union. The protection of such members is nothing but a scabs charter. (shop steward)

> The imposition of rules concerning membership, discipline and expulsion constitute an infringement on the autonomy of unions to regulate their own internal affairs. (national official)

The EETPU has not been subject to any legal action concerning union membership or discipline and have complied with all the legislative provisions imposed. Relevant changes to their rule-book have been made over time. The EETPU research department reported that the number of cases taken by members against trade unions in this domain had been 'very small'. In this context the view of EETPU officials was that trade unions were becoming adept at managing the problems that the legislation confronted them with and dealing with it. As one shop steward put it:

> The fact is that during the long period of Conservative government the union movement learnt to accept and accommodate things it had previously been opposed to. This perhaps suggests the union movement is flexible and capable of dealing with change more than some people thought.

NATFHE were also hostile to the rights relating to union membership and discipline which rendered pre-existing union rules invalid. The administrative officer (specialist official with responsibility for rule changes) commented:

> The statutory rights given to members constituted a significant inroad into the freedom of trade unions to manage their own affairs. Section 3 EA 1988 clearly regards union members' contracts of employment as taking precedence over any union decision. Section 14 TURERA overrides the well-established rule that an individual has no automatic entitlement to associate where the group is unwilling to do so.

One NATFHE national official observed:

> A wide range of disciplinary sanctions are caught within the coverage of s.3. This includes expulsion from any branch or section, fines, the deprivation of, or access to benefits, services or facilities which would otherwise be provided or made available to the person by virtue of his union membership, encouraging or advising another union not to accept that individual into membership. It is highly restrictive.

The experience of NATFHE officials was that although the statutory rights had given individual trade union members greater opportunity to challenge the actions of the union, there was little evidence of tribunals and courts being swamped with complaints from members. This was despite the fact that national officials believed that trade union members were more likely to complain about breach of a personal right than about a mere breach of internal procedure, since the former impacted upon them directly. As one national official noted:

> Generally unions attempt to carry their members with them advancing and protecting members' interests. The reality is that conflicts with members occur in very isolated cases.

The executive officer (specialist officer with responsibility for union administration) of the **CPSA** reported that the union regarded the provisions pertaining to union membership as a 'direct attack on the right of a trade union to implement and administer its own recruitment policy'. The CPSA believed that trade unions should not be denied the right to refuse admission. The following quotes illustrate the union's position.

> The reform of the Bridlington principles was a matter of grave concern. The rules had reduced the incidence of inter-union disputes over organisational matters at the workplace. One cannot help think that such measures were designed to cause tension and disharmony in the union movement.

One shop steward commented:

> The introduction of rights of membership fell within the general atmosphere that Conservative administrations wanted to create. It was about sending out a message to the general public that trade unions could not be trusted. The law was needed to control recruitment and representation. All this stuff was about seeking to control union behaviour not about democracy. Measures introduced overruled the established traditional rights of trade unions.

The CPSA was also critical of the interference in the internal affairs of trade unions in respect to the provisions on 'unjustifiable discipline'. The view of officials was that the case for such intervention had not really been justified. Significant levels of abuse were not revealed and the rules went against established principles concerning the right of trade unions to establish their own internal rules. However, the CPSA complied with the legal requirements. One national official of the CPSA expressed a positive aspect to this form of increased scrutiny on trade unions.

> I think the introduction of the statutory rights encouraged trade unions to review their rules regarding discipline. Rule-books could sometimes be ambiguous, leading to a dispute between members and the union. Unions have done a lot of work in this domain to promote greater transparency and fairness. I have no doubt that the intervention of the law contributed to this process of reform.

6.2.1 Summary of the Rights Pertaining to Membership and Discipline

In respect of statutory rights pertaining to membership and discipline the majority of the case-study unions were critical of Conservative policy. There was an overwhelming view that the restriction on disciplining strikebreakers was the most potent provision. This damaged collective industrial action and was therefore highly undesirable. The provision stemmed from the Conservatives' view that union members are faced with conflicting loyalties (to their union and to their contract of employment) and should be allowed to resolve them without pressure from the union through threats of disciplinary action.

The provisions have been little used by members, presumably because trade unions genuinely try to comply with the law adapting their procedures in line with the requirements. This seems the most likely explanation, given that some trade union officials expressed the view that members were more likely to complain about breaches of these private, personal rights than about defects in technical procedure. However, an alternative explanation for the lack of claims under s.3 might be that such actions had to be personally financed by members, legal aid not being available. The most high-profile cases in this area have concerned non-case-study unions; these have included: NALGO v Kilhorn and Simm [1990] IRLR 464, Bradley v NALGO [1991] IRLR 159, NACODS v Gluchowshi [1996] IRLR 252, Fire Brigade v Knowles [1996] IRLR 337. An example of the use of the legislation is the case involving NALGO, where nine ex-members who were disciplined for refusing to join

a properly-balloted strike were each awarded £2,250 each in compensation (McMullen 1991: 4).

6.3 Trade Unions CROTUM and the CO

The post of CROTUM was established under s.19 of the Employment Act 1988. CROTUM's role was created because the Conservative government believed democracy in trade unions would be hampered if individual members encountered too many practical difficulties when enforcing the rights that they had been granted against their trade unions (Trade Unions and their Members 1987). The then Conservative government stated in the Green Paper that 'trade union members needed to be exceptionally determined and sometimes courageous if they were to embark on the process of claiming and enforcing the rights which the law gave them'(Trade Unions and their Members 1997). The Conservatives regarded the creation of the office as consistent with and complementary to the development of the Citizen's Charter (Industrial Relations in the 1990s). On the other hand, the creation of the agency could be interpreted as an attempt to disrupt trade union activities. The presence and functions of the Commissioner encouraged individual union members to take legal actions against their own unions; CROTUM could provide financial assistance to any union member who was taking or contemplating taking legal action against his/her union or an official or trustee of his/her union in respect of certain breaches of statutory duties relating to a failure of administration or governance.

The role of CROTUM was extended by the Employment Act 1990 to include assistance to pursue legal action for alleged breaches of union rule, relating to the appointment and election to union office, balloting of members, disciplinary proceedings and the application of union funds or property (Barrow 2002).

The Commissioner could assist the individual by financing legal advice and representation. In deciding whether to provide assistance CROTUM considered whether the claim raised any issue of principle; was so complicated that it would be unreasonable to expect a member to sue without assistance; or whether the matter was one of public concern (Nairns 1999). The CROTUM was abolished by the Labour Government in the Employment Relations Act 1999 and the majority of its powers transferred to the Certification Officer (Lockwood 2000; Honeyball and Bowers

2002). A Scottish version of CROTUM was proposed, but for acronymic reasons, was dropped!

The office of the Certification Officer (CO), in contrast to CROTUM, has a long history and pedigree. The original forerunner to the CO was the Registrar of Friendly Societies, who administered the registration of unions under the Trade Union Act 1871. The CO was established in 1975 and is now governed by s.254 of the Trade Union and Labour Relations Act 1992. The traditional role of the CO was to maintain a list of independent trade unions and to issue certificates of independence to such unions, to maintain records of union annual membership, financial returns and copies of union rules (Sargeant 2003). The Trade Union Act 1984 gave the CO responsibility for approving the ballot rules of a trade union, pertaining to political funds ballots, and the jurisdiction to receive and determine complaints that a trade union failed to comply with one or more provisions relating to the secret ballots for the election of senior officials (Duddington 2003). The Trade Union Reform and Employment Rights Act 1993 extended the role of the CO further. This gave the CO the power to appoint an inspector to investigate union practices where fraud is suspected (Nairns 1999). As the statutory regulation of trade unions has increased during the 1980s and early 1990s, the CO's administrative role has been supplemented by an expansion in the supervisory and judicial functions of the post. The CO must investigate any complaint made, and decide it impartially on the facts of the case and in light of the representations made by the parties concerned (Lockwood 2000).

6.3.1 Trade Unions and CROTUM

This section considers the impact of CROTUM on internal union affairs in two ways: first, by focusing on the different experiences of the case-study unions, and second, by an analysis of the applications of assistance made to CROTUM.

The **BFAWU** did not have any contact with CROTUM, which partly explains why the union has managed to retain the majority of its own rules and continues to operate in the area of elections and industrial action in contravention of the legislation. As the

BFAWU political officer (specialist official with responsibility for rule changes) put it:

> The BFAWU has simply not to date been challenged by any of its members, which the system of enforcement required for any action to be taken.

The union regarded the creation of CROTUM as an irrelevance, a waste of public funds and an unreasonable interference in the internal affairs of trade unions. The general secretary stated:

> The creation of CROTUM was a hostile attack on trade unions. The majority of right-thinking members of the labour movement would not resort to complaining to such an agency. The law was devised to encourage members to complain about their union. So far it has singularly failed to produce significant reform of internal union processes.

The above view was confirmed repeatedly in interviews with union members and officials who demonstrated a 'high degree of satisfaction' with the way internal government operated in the BFAWU. Members also expressed the view that internal mechanisms only should be used for resolving problems. The phrase that 'members should not air the union's dirty linen in public' was repeated on several occasions.

ASLEF viewed CROTUM with a substantial degree of contempt. One shop steward observed:

> CROTUM was created as a vehicle for snooping on the internal affairs of trade unions. It was designed to disturb and undermine our actions and activities. It provided members with the right to challenge not only balloting procedures and disciplinary procedures but also union decision-making.

Another argued:

> Some members viewed CROTUM as some kind of watchdog that they could complain to when it suited them.

Whilst ASLEF did not have any formal contact with CROTUM, it was indirectly affected by the existence of the Office. The leadership of ASLEF refused to act on a complaint concerning the wording of a ballot paper in connection with an industrial action ballot of drivers at Connex South Central. The members concerned complained to CROTUM. CROTUM subsequently instructed a solicitor to act on the dissident members behalf. Following an exchange of correspondence between the respective legal teams, CROTUM was satisfied that the union had complied with the legal requirements. Whatever action the union took, it always kept one eye on the law

in an attempt to ensure they did not contravene the rules. This ensured a minimum degree of contact with CROTUM. The rule-change officer (specialist official with responsibility for rule changes) commented:

> The union introduced rules and guidance notes in an attempt to ensure the union acted in line with legal rules and in a fair manner. In that sense I suppose you could argue that the system encouraged trade unions to be more careful how it dealt with certain matters.

The **EETPU** was not the subject of any proceedings involving CROTUM. The administrative officer (specialist official with responsibility for dealing with complaints made against the union) stated:

> I know we did have some members that contacted CROTUM. However, I think these were often from members who mistakenly thought CROTUM could deal with individual grievances. Any complaints that were made were either out of CROTUM's remit or simply not pursued formally.

Another national official observed:

> Whilst we did not have any formal dealings with the CROTUM it made the EETPU and I think other unions more careful how they dealt with grievances. So I guess at some level it had an impact.

However one shop steward was more critical of CROTUM:

> Whilst the EETPU supports the rationale behind secret ballots, the union believes that the rules surrounding the balloting process and the establishment of CROTUM simply represented a deliberate attempt to trip trade unions up and make life difficult for them.

In respect of the above unions, CROTUM could be said to have had little impact on policy, practices or procedures. This is most clearly illustrated by the example of BFAWU. The findings in this context confirm research carried out in the early 1990s, which found that use of CROTUM could be 'characterised by the existence of a large number of inquiries, a relatively low number of applicants, and an even smaller number of assisted applicants' (Morris 1993). This is also consistent with the findings of more recent research into the function of CROTUM (Lockwood 2000). The RMT, TGWU, NATFHE and CPSA had slightly more substantive contact with CROTUM.

The **RMT** were the subject of one complaint to CROTUM that caused it to rerun an industrial action ballot. CROTUM was called upon to assist an applicant who complained that the union had failed to properly conduct an industrial action ballot. The complaint against the union was for an alleged breach of s.229 (2) of TULRCA 1992. The law requires that a voting paper must ask one of two appropriate questions.

The union may frame the question as it wishes, provided that in doing so it does not qualify or comment on the mandatory statement that:

> If you take part in a strike or other industrial action, you may be in breach of your contract of employment.

The voting paper must ask for a simple 'Yes' or 'No' answer to some form of at least one of these questions:

- Are you prepared to take part (or to continue to take part) in a strike?
- Are you prepared to take part (or to continue to take part) in industrial action short of strike?

Sometimes unions include both questions on the voting paper on the basis that if it appears that there is not a majority in favour of a strike there may nevertheless be a majority in favour of taking industrial action. However, separate questions must be asked in respect of questions on strikes and industrial action short of a strike.

The case arose out of a ballot for industrial action on the rail network in 1989. On the ballot paper it was unclear whether the member was voting 'yes' or 'no' to all industrial action or only to certain aspects - no overtime, non-attendance at meetings. A member of a local branch of the union claimed that this could be viewed as a 'rolled-up' ballot question, and applied for the assistance of CROTUM. CROTUM supported the application and a solicitor was appointed. Having sought counsel's opinion, the solicitor contacted the union. The union then decided to cooperate by altering the wording of the question before conducting a new ballot. Bob Crowe, a national official, expressed the attitude of the RMT to CROTUM:

> The establishment of CROTUM was a vindictive move by the then Conservative government designed to cause trouble for the trade union movement.

The **TGWU** experienced a growing number of complaints during the early 1990s about its procedures. However, the majority concerned individual grievances that were narrow in focus, and therefore such complaints did not have a dramatic impact on union processes. The administrative officer (specialist officer with responsibility for rule changes) explained:

> The majority of complaints have been made directly to the union rather than to CROTUM and these have eventually been resolved by mutual agreement. I think members who complained thought that CROTUM could help them solve their problem for them.

The TGWU had two dealings with CROTUM. The first case concerned a failure to comply with the statutory requirements pertaining to elections for the positions of the president and two other members of the NEC in accordance with the EA 1988. The claimant subsequently sought an enforcement order from the high court, and this was followed by an agreement on remedial steps.

The second case concerned a member who complained to CROTUM that they had been denied access to accounting records. The union received a solicitor's letter stating that the union were obliged to provide access to union records of the applicant's own branch but not of others. The TGWU acted in accordance with this information.

In discussing the role and overall impact of CROTUM one national official observed:

> The existence of CROTUM and the promotion of its role gave disaffected members a platform to complain. Whilst such complaints have not been vast in volume, they have been time-consuming and expensive to deal with. There was really no justification for the existence of CROTUM, except as a burden on trade unions.

Another national official questioned the reason behind the creation of CROTUM:

> If the Conservatives were so concerned with individual rights, why not create a Commissioner for Unfair Dismissal to support workers. Unfair dismissal claims are far more common than claims by members against their union. The Conservatives just wanted to cause unions trouble.

NATFHE was exposed to CROTUM following a complaint by a disaffected member questioning the union rules relating to the selection of candidates for an election. Section 43 TULRCA provides that no union member may be unreasonably excluded from standing as a candidate at an election. The applicant claimed that a provision in the union rule-book requiring a member to demonstrate support amongst other union members in order to stand for election contravened the law. The Commissioner reviewed the case and sought legal counsel's view on the matter. The complaint was dropped, following a declaration by the CO, who had received a similar complaint from an applicant who belonged to another union, the Iron and Steel Trades Confederation. The CO held that it is not unreasonable for a union to demand a certain level of support from fellow members as a precondition of standing.

However, any such requirement must be stipulated in the rules, and cannot be a matter for the exercise of discretion on an ad hoc basis.

The following quotes illustrate the views of the regulatory framework held by NATFHE officials:

> The advent of CROTUM was another layer of bureaucracy for trade unions. The decision by the union to create its own legal department in 1988 was important. The procedures it devised and disseminated throughout the union helped ensure that we did not have much contact with CROTUM. (administrative officer, specialist official responsible for administration)

> The majority of trade unionists find it difficult to say anything positive about CROTUM. Whilst I believe its creation was an anti-trade-union measure, I think the system of regulation as a whole brought the union movement some benefits. It encouraged trade unions to improve internal procedures and validated union practices. (rule revisions officer, specialist official responsible for rule changes)

The view of lay members and branch officials was that such regulatory initiatives tended to centralise decision-making within the union. Head office became more prone to overseeing the discipline of members by branches. Many local officials understood this trend, given the potential legal action the union might face.

The **CPSA** was the focus of two investigations by CROTUM. In the first case the applicant complained that they had been refused access to accounting records. The Commissioner's assistance resulted in a solicitor's letter being sent to the union. This outlined the rights of union members in this respect. Access was then subsequently granted without the need for litigation. In the second case a group of members complained that the procedures for electing senior officials did not accord with the provisions of the TUA 1984. This matter was subsequently resolved, without litigation, by the leadership reforming its election procedures.

In respect of the impact of CROTUM on the CPSA the political officer (specialist officer with responsibility for constitutional change) stated:

> CROTUM had no real impact on the democratic structures and processes of the CPSA. However, its existence encouraged trade unions to be more careful in their conduct than might otherwise have been the case.

6.3.2 Overall Impact of CROTUM

On the basis of the experiences of the case-study unions, the impact of CROTUM might best be described as 'uneventful'. This substantiates the findings of earlier

research carried out in the early 1990s, into the creation of the role of CROTUM, which found that the use of the office could be characterised by the existence of a large number of inquiries, a relatively low number of applicants, and an even smaller number of assisted applicants (Morris 1993; Carby-Hall 1992). An indication of the wider impact of CROTUM on trade unions in general is illustrated by an analysis of the number of applications from individual union members (case study and other unions) to CROTUM that were made during the period that the post was in existence.

Table 6.1: An Analysis of the Applications for Assistance made to CROTUM between 1988 and 1999, the Life of the Office

Year	Received	Resolved	Out of scope	Other
1988/89	10	1	6	3
1989/90	29	1	9	19
1990/91	34	3	8	23
1991/92	64	7	19	38
1992/93	50	15	10	25
1993/94	47	5	12	30
1994/95	57	12	5	40
1995/96	91	11	13	67
1996/97	74	4	30	40
1997/98	94	2	20	72
1998/99	84	1	14	69

CROTUM was abolished by the Employment Relations Act 1999 and the majority of its powers transferred to the CO.

Table compiled from figures given in CROTUM Annual Reports that were published during the life of the Office until its abolition in 1999.

Table 6.1 indicates the number of cases received by CROTUM, those successfully resolved after initial contact with the office, those which were out of the scope of CROTUM's powers and the category headed 'others', which includes cases dropped by the applicant, cases that were under consideration and cases not assisted. The figures indicate a steady rise in applications from the inception of CROTUM. However, a large number of applications were deemed to be out of scope or dropped by the applicants. Out of 634 applications only 62 cases (9.7%) were assisted and successfully resolved. The large number of cases which were out of the scope of CROTUM's powers led CROTUM to comment in the 1996/1997 Annual Report:

> Many union members who approach my office are seeking assistance of a sort I cannot give them. Some are seeking advice about a specific point, or conciliation between themselves and their trade union, while others want me to carry out an investigation into a particular union activity, or act as an arbitrator or ombudsman.

The majority of these types of complaint can be categorised as 'representational disputes'. This is where the individual member claims that the union has either denied them representation or has failed to represent them properly. Union members were often indignant that they had paid union subscriptions over many years and were then provided with what they regarded as sub-standard service at a time of need. These representational disputes were the largest single issue of complaint, yet there was no avenue of recourse via CROTUM.

It is evident from Table 6.2 below that there were three categories of breach that dominated applications to CROTUM. The prevailing categories of complaint included:

a) claims that procedures for the appointment, election or removal of a person from any office had been short-circuited, abused or misused;
b) claims which concerned irregularities in the constitution or proceedings of any committee, conference or body of the union;
c) complaints about breaches of union disciplinary procedures, pertaining to the inappropriate wrong, or poor treatment of individual members.

Table 6.2: Types of Claim made in Applications*

Section:	**Types of Application**	**TOTAL**
16	Trustees caused/permitted unlawful application of the union's property.	12
26	The union has not observed statutory duties in connection with membership registers.	5
31	The union has failed to allow access to union's accounting records.	43
56	The union has failed to comply with the statutory requirements relating to elections.	52
62	The union has without support of a properly conducted secret ballot authorised or endorsed industrial action.	13
71	The union has failed to comply with the rules approved by the Certification Officer in any ballot, or proposed ballot, on the use of funds for party political purposes.	2
109 (2)(a)	The breach of union rules relating to the appointment or election of a person to, or the removal of a person from, any office.	101
109 (2)(b)	The breach of union rules relating to disciplinary proceedings by the union (including expulsion).	81
109 (2)(d)	The breach of union rules relating to the balloting of members	50
109 (2)(e)	The breach of union rules relating to the application of the union's funds or property.	26
109 (2)(g)	The breach of union rules relating to the constitution of any committee, conference or other body.	125
	Applications out of scope of the Commissioner's powers to assist.	124
	TOTAL	**634**

* Table includes provisions contained in Trade Union Labour Relations (Consolidation) Act 1992.

In later years there was also a considerable upsurge in complaints by members who claimed that they were being denied access to what might be regarded as accounting records. The Commissioner explained the reason for the increase in such complaints:

> Whilst the legislation gave a member a right to access accounting records it did not furnish a definition of the term. The effect of this is that the parties tend to become embroiled in arguments about the meaning of the term and adopt widely different interpretations.

To date the courts have also failed to determine the meaning of accounting records, and therefore to clear up this grey area in the law. Another feature worthy of attention is that there were few claims made under the original powers of CROTUM, to provide

financial assistance to trade union members who wished to take legal action against their own union for breaches of certain statutory rights. The fertile area for complaints was concerned with alleged breaches of obligations under the union rule-book.

There are three reasons for the low level of claims relating to breaches of statutory duties. First, with the exception of the law relating to accounting records, the legal provisions pertaining to this area were precisely drafted and did not give rise to contentious disputes over interpretation. Second, trade union policy was to comply with these legal provisions, and hence to avoid legal actions surrounding them. This was a view expressed by trade union officials, CROTUM and the CO during the course of the research. A third reason why CROTUM received fewer claims relating to breaches of statutory provisions is that those relating to elections, political fund ballots, secret postal ballots and financial affairs usually went to the CO. These factors mean that breaches of statutory rules have, therefore, been the exception rather than the rule. CROTUM stated that:

> Breaches usually only arose by way of oversight, or maladministration rather than any evil intent.

In contrast, trade union rule-books have provided the main source of complaints because they are often open to interpretation. This led to the parties developing a different perspective of certain rule-book provisions. CROTUM commented:

> The union's view of the rule-book is based on a global picture of the organisation. In contrast a member's approach tended to be narrower and individualistic. Significant numbers of claims arose in this category because the rule-books involved had devolved over many years and had been poorly drafted.

The increase in union mergers also resulted in a proliferation of rule-book complaints. This was because the merger of unions often caused the production of a composite rule-book. This contained many ambiguities or contradictions. In particular 1996 and 1997 saw a significant number of complaints.

The conclusion to be drawn from an analysis of complaints made to CROTUM is that because few applications have been assisted, the procedure has had little direct influence on trade unions, causing minimal changes to procedures or practice. The BFAWU had no contact with CROTUM and the other unions had relatively few

dealings. There was no evidence from the case-study unions of significant numbers of disaffected members attempting to enforce changes to internal processes via the legal process, with or without the help of CROTUM.

However, CROTUM claimed that there may have been a greater indirect impact, as a result of the approach of the Office that provided union members with two specific benefits. In interview CROTUM asserted that:

> I provided the individual member with a recognised facility for complaint if they believed that their trade union was breaching statute or its own rule-book. Secondly CROTUM may have acted as a deterrent of abuse, since ultimately the trade union was threatened with court action for abusing powers.
>
> The existence of the office encouraged marked shifts in trade union behaviour and practice that has seen them putting their house very much in order
>
> I encourage members to attempt to resolve their complaints by using grievance procedures contained in the rules and constitution of their union, rather than by resorting immediately to litigation. I am pleased to report that this was highly successful, as many complaints were satisfactorily resolved between the parties without the necessity of any form of legal action.
>
> Every effort must have been made to settle the complaint internally before I become involved. The claim that the low level of cases to which CROTUM gave assistance means that the arrangements were inefficient and unnecessary might be misleading. The fact few cases were assisted could be regarded as extremely satisfactory, since it means disputes were being resolved without the need for the parties to resort to contentious and expensive litigation.

CROTUM also contended that an analysis of the volume of applications and the method by which cases were referred to him revealed a significant shift of attitude amongst trade unions and unionists towards CROTUM over time. In the early years there was a marked reluctance on behalf of trade union members to take actions against their trade unions since it was regarded as using 'Tory legislation to beat the trade unions'. Most union members did not want to be associated with this allegation. The last few years witnessed the number of applications to CROTUM steadily rising and 1997 produced the largest number of complaints ever. In addition, four years ago only one quarter of people approaching the office did so as a result of being made aware of CROTUM's existence by their trade union. By 1997 this figure had risen to over 55 per cent. When interviewed, CROTUM asserted:

> This suggested that the concern of trade unions that the agency was anti-trade union was perhaps gradually being allayed.
>
> Trade unions became aware that CROTUM was not looking to go on 'fishing expeditions' in order to find cases to hammer trade unions in the courts and had confidence that issues would be dealt with in an appropriate way.

The overwhelming view of CROTUM was that whilst trade unions were still opposed in principle and ideologically to the legislation, their aversion to CROTUM diminished; trade unions, their officials, and their members ceased to regard CROTUM as a threat to trade unionism.

This perception of CROTUM is not that expressed by officials and members interviewed in the case-study unions and detailed above. There was criticism and hostility to the role of CROTUM. There is however one example of a trade union using CROTUM strategically to raise the importance of a specific issue within the organisation. It involved the union positively and proactively encouraging an element of the membership to contact CROTUM. This was done so that the union hierarchy could show dissident voices within the union that there was a serious matter, which required attention, as certain members were seeking the assistance of CROTUM. This opportunistic behaviour occurred in the **CPSA,** where the leadership was attempting to steer through reform of union government in the face of strong opposition from left-wing activists. The leadership encouraged certain members to contact CROTUM, claiming that the elections for the NEC of the union had not been carried out in accordance with the TUA 1984. The leadership used the complaint as evidence of the need for internal union reform and undermined the arguments of the dissident voices.

6.3.3 Trade Unions and the CO

To date there has been no investigation into any of the practices of the **BFAWU** by the CO. This is surprising, given that in a number of respects the union is not complying with the Conservative model of democracy. The lack of complaints by members does not however surprise the CO, who stated:

> Unions and many of their members were hostile to CROTUM. This meant union members also had inhibitions about raising complaints to the CO. Many members believe it wrong to complain to any external body about the internal affairs of their trade union.
>
> I am aware that some unions are not complying with the law. However, it is not my role to launch investigations on my own initiative. A formal complaint must be received from a member. If members do not see fit to complain, I do not think it right to interfere in a trade union's affairs by telling them how they should be operating.

ASLEF has only had to deal with the CO concerning the financial affairs of the union. Sections 28 and 31 TULRCA 1992 require a trade union to keep proper

accounting records, to submit an annual return to the CO and to send out annual financial statements to members within eight weeks of lodging their accounts with the CO. For administrative reasons ASLEF were late in providing this information on two occasions. The first was due to the appointment of new auditors, and the second due to illness of a senior official. On each occasion the union received a 'gentle reminder' from the CO. The union rule-change officer (specialist official with responsibility for constitutional changes) explained that:

> The union had not been subject to any investigation by the CO. The only occasions the union had dealings with the CO was in respect of the political fund rules and the annual financial statement that the union had to submit.

Senior officials of the union expressed the view that the role of the CO was very different to that of CROTUM. The rule-change officer enunciated the view held by ASLEF towards the CO:

> The CO fulfils a well-established administrative function in respect of the union movement. CROTUM was set up by a government with an ideological aversion to trade unions. It was hoped that CROTUM would hamper union decision-making by encouraging a minority of members to complain.

However, the general secretary sounded a more cautionary note:

> The powers of the CO have become more politicised. The CO has a judicial as well as administrative role. A balanced and even-handed approach is required by the CO or the goodwill of the trade union movement may be lost.

This point has not been lost on the CO, who stated:

> There are clear dangers to extending the powers of the CO. Part of the acceptability of the CO as an independent determinant of disputes within unions stems from the fact the CO has never had to be involved in contentious relations between employers and trade unions. This would be put at risk if the CO jurisdiction were expanded too widely.

The RMT has been the subject of complaints by members, which have resulted in investigations by the CO on several occasions. On one occasion the union ran its 1985 NEC elections according to the provisions of its rule-book, rather than following the new legislative requirements. The CO received and investigated 46 complaints about its doing so. As a result, the union was forced to rerun the election at considerable expense. On a further occasion the union was accused of unreasonably excluding a member from being a candidate in an election. The CO did not uphold the complaint, but did criticise the clarity of the union rule-book, which he found to

be the cause of the confusion. The CO observed 'much time and trouble could have been avoided if the rule-book had been drafted more carefully'.

The RMT was the subject of another prominent investigation in 1994. The CO used his powers under s.37A TULRCA 1992 to instruct the union to produce specific documents. An examination of these papers and a commitment from the union to make records available to members enabled the CO to decide no further action was necessary. The view of the CO given by the union's executive officer (specialist official with responsibility for administration) was that:

> The office provided a user-friendly route in terms of informality and cost to both the applicant and union.

The **TGWU** has been the subject of three declarations by the CO, following complaints being made by members about its procedures. The first complaint, lodged by six members, related to alleged defects in the running of elections for senior officials, held in 1990. It was claimed that the union had failed to do all that was reasonably practicable to give members a legitimate opportunity to vote, and that it had also failed to ensure that the votes were fairly and accurately counted. The CO upheld the complaints, with the result that the elections had to be rerun.

The second declaration was made in respect of a series of five complaints from members, arising out of the 1996 elections for the NEC. The claimant alleged that he had been unreasonably excluded as a candidate in the election, that the union failed to distribute his submitted election address and that the scrutineer's report contained inaccuracies. Following discussions with the union and studying documents provided by the union the CO concluded that there was no case to answer.

Finally, in 1995 the TGWU was also subject to a complaint about its financial affairs. This resulted in a significant change to the rules of the union. A rule permitted branch secretaries of the union to retain a percentage, of the subscriptions of the membership. The amount formed part of the branch secretary's payment for the work. The system made sense in small branches where people paid their subscriptions in cash and the secretary incurred direct collection costs. However, in large branches the secretary was allowed to retain the same percentage, despite the fact that many members often

paid by direct debit. In such branches the amount of payment to the secretary was out of all proportion to the work involved. A member made a complaint to the CO and the union, after consultation with the CO, abolished the rule. The TGWU executive officer, (specialist official with responsibility for administration of union affairs) stated:

> The trade union movement accepts the role of the CO completely. The CO is different in style and culture to CROTUM. CROTUM was introduced as a hostile attack on trade unions. The CO has a long-established and respected role in the administration of trade union affairs.

In the case of the **EETPU**, a complaint in 1986 by an unsuccessful candidate resulted in the union rules for the election of its NEC being investigated by the CO. The law requires that the result of an election must be ascertained solely by counting the number of votes cast directly for each candidate by those voting. The rules of the union allowed a maximum of four members in any one of its nine geographical divisions to serve on the NEC. Nine members of the committee were elected in divisional ballots, the remaining fifteen in a national ballot. The rule meant that if there were more than three candidates from any one division in the national ballot, only the three who polled the greatest number of votes as between themselves could be elected. This was the case even if the fourth candidate in that division polled more than a successful candidate in another division. The CO declared that whilst the law was designed to secure that the only votes which would determine the outcome of an election were those directly cast by individuals, it did not mean that a bare count of votes determined the result of the election. Recourse also had to be made to the union rules. The union rules were therefore vindicated, and the complaint dismissed. In regard to the regulatory role of the CO, one national official commented:

> The CO provides a recognised route for solving cases concerning trade unions, and this regulatory framework helps validate union procedures and actions. This makes them legitimate in the eyes of the membership and society.

NATFHE was required to make important reforms to union government, following a challenge by a disgruntled member to the CO. When the TUA 1984 was introduced, requiring the election of the NEC by the membership, the left sought to retain their influence. They proposed a new structure whereby members would elect representatives to the national council. The national council would then appoint members to the executive and senior officers. The claimant alleged that the union was failing to comply with the legal requirements covering union elections. The CO

declared that the union was in breach of the law since a union must only have one primary decision-making body, which was elected, and that had to be the NEC.

The political officer (specialist official with responsibility for constitutional change) expressed some serious reservations about the continuing expansion of the CO's role.

> The traditional role of the CO is regarded as valid and important in trade union circles, helping ensure good practice in trade union administration. However, the continued development of the CO's powers is a cause for concern. It could result in a highly confrontational relationship between the CO and some trade unions.

Several decisions by the CO have involved the **CPSA.** In the first, a member complained that the 1993 elections for president and vice-president did not satisfy the requirements of the legislation because ballot papers had not been properly distributed. Some ballot papers never arrived at their destination and others were sent to workplace addresses, when the members concerned had not given their authority for their own addresses to be used. The CO upheld this complaint, and therefore the election had to be rerun.

The second complaint concerned the rerun of the above 1993 elections. The CO held that full details of the scrutineer's report were not made available to members and that some results were announced before the scrutineer's report was published. However, the breaches did not affect the outcome of the election and in the opinion of the CO constituted a minor procedural infringement. Therefore no further action was deemed necessary.

A third complaint involved the conduct of the CPSA NEC elections in 1994. The complaint alleged that the leadership had breached the law pertaining to election ballots by including a list giving political groupings of the candidates in the elections. After investigation into the actions of the CPSA and consideration of the law the CO dismissed this complaint, concluding that:

> There was no restriction under the provisions of the TUA 1984 on the material that could be included with the ballot paper.

Finally, the CPSA was the only case-study union subject to a significant complaint under s.80 of the TULRCA 1992. The complaint concerned the CPSA political fund ballot held in 1997. In the ballot the majority of the membership voted against

retaining its political fund. The applicant alleged that the union had failed to take appropriate steps to notify members of the contents of the scrutineer's report within three months of the union having received it. The CO upheld the complaint. However, since the breach of procedure did not have any impact on the ballot result, it was not grounds to have the ballot re run. The union agreed to remedy the problem by publishing the report of the scrutineer in full in its journal.

The complaints against the union are evidence of the internal divisions which existed at this time, with dissident factions willing to cause administrative problems for the union leadership. The following comments illustrate this point:

> The number of complaints by members during this period was testimony not only to the gulf that existed between some members of the union and the leadership, but also to the sectionalism that has bedevilled strong cohesion in the union for so many years. (lay official)
>
> Rival political factions and disaffected individuals within the union at national and local level exploited the avenues for complaint against the union for their own ends. (political officer)

Although the CPSA was subject to investigation by the CO, the attitude of the union to the CO was markedly different to that towards CROTUM. Whereas the attitude to CROTUM was hostile, the administrative officer with specialist responsibility for dealing with complaints made against the union stated that 'the view of national officials and NEC members was that the CO had an accepted and valid role in supervising trade union affairs'.

6.3.4 An Analysis of Complaints made to the CO

An understanding of the wider impact of the role of the CO on trade unions in general can be gleaned from an analysis of the number of complaints made to the CO. Table 6.3 reveals that a relatively low number of complaints have been made to the CO, despite the introduction of a legal framework that encouraged the individual union member to take action against their trade union. The table also demonstrates that the CO has made few declarations against trade unions, reflecting the point made by the CO, in interview, 'that trade unions generally run their affairs in an appropriate manner'.

Table 6.3: Types of Complaint made to the CO and the Declarations made by the CO against Trade Unions between 1985 and 1999.

Types of Complaint made to the CO between 1985 and 1999

Types of complaint: Section:	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99
54 Union elections	4	17	6	5	3	5	2	2	7	9	2	15	3	12	18
82(2) Political fund	7	5	7	0	3	1	1	3	1	3	2	0	3	0	2
77-80 Political fund ballot irregularity	0	0	0	0	0	0	0	0	0	0	0	1	0	3	0
37 Financial affairs	0	0	0	0	0	0	0	0	0	2	8	3	10	5	5

Declarations made by CO against Trade Unions between 1985 and 1999

Types of complaint: Section:	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99
54 Union elections	0	9	4	2	1	2	1	0	3	1	0	2	0	1	1
82(2) Political fund	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0
77-80 Political fund ballot irregularity	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0
37 Financial affairs	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0

a) Complaints by Members Concerning Elections

In 1986 complaints by union members to the CO resulted in the CO making seventeen decisions, nine of which contained declarations to the effect that the unions concerned had failed to comply with various provisions of the Act. In all cases the unions against whom declarations were made agreed to take steps to remedy the breaches in question. The majority of failures to comply with the legislation concerned technical breaches of balloting procedures, rather than any wilful disobedience of the law.

In the three years following 1986 the number of complaints made by members concerning trade union elections decreased, as unions became more familiar with the legal provisions. This was a temporary decline, as in several subsequent years the number of complaints against trade unions concerning elections began to rise again. The rise was as a result of changes to the balloting process introduced by the EA 1988 and an increased awareness of the legal provisions by union members. However, in the majority of cases the complaints were found by the CO to be unfounded or of such a minor nature that they did not warrant any official action being taken. In all cases the CO and the unions concerned made agreement on the specific remedial steps.

b) Complaints by Members of Trade Unions re Political Fund Ballots

The majority of complaints made by union members were rooted in the original provisions introduced by the TUA 1913 s.3 (2), (now section 82 TULRCA). The main categories of complaint related to the following allegations: 1) the unions concerned had spent money from their general funds, which should have been spent from their political funds. 2) the unions involved had acted in breach of their political-fund rules, in a manner that affected the complainants in a personal way. The majority of complaints were resolved to the satisfaction of the complainants as a result of action or explanation by the unions concerned. A union member, under the provisions introduced by the Conservatives during the 1980s and 1990s, has made only one complaint. The one complaint investigated by the CO was under s.79 TULRCA 1992. This was the complex case of the Prison Officers' Association (POA). This case concerned the POA ballot for the establishment of a political fund held in 1995. The law provides that members have the right to have ballot papers sent to their home address or another address agreed in writing. This rule caused some difficulty for the POA. There was an understanding amongst all relevant parties that the prison officers' home addresses should not be made known to any one outside the employing organisation, including the trade union. This was particularly so in relation to Northern Ireland. It was agreed that ballot papers would be sent to prison governors, who would then arrange for them to be delivered to the prison officers via the internal mail system of the respective prison. The governors of the prisons arranged for the ballot papers to be sent to local union officials for distribution to the membership. Members collected their ballot papers from local union officials and, signed for them, then, having voted in a polling booth, posted the completed ballot papers in a mail sack provided by representatives of the union. The respective governors wrote a letter to the scrutineer stating that the employers were satisfied with the arrangements for the ballot.

However, the ballot was in contravention of the law, since it is difficult to envisage that Parliament intended that in a secret postal ballot, ballot papers could lawfully come under the control of the union after their despatch by the scrutineer and before delivery to the member. No part of the Act suggests that ballot papers can come back into the union's control, and several provisions suggest that they cannot. For

example, s. 51A TULRCA 1992 requires a trade union to ensure that the storage and distribution of voting papers for the purpose of the election are undertaken by one or more independent persons, in this case the scrutineer. The union did not have permission from the scrutineers to adopt this method. It immediately compromised the security of the ballot.

Members at HMP Belfast and the Maze made a complaint about the ballot procedure to the CO. The CO declared that the conduct of the ballot was unsatisfactory. The process was laid open to abuse, contrary to the legislation. The procedure gave rise to the possibility of malpractice by creating the opportunity for persons to have access to blank ballot papers, which they would not and should not otherwise have had access to. Indeed, the CO came to the conclusion that well over 100 ballot papers referred to him by the scrutineer had been completed by two or three people. Following the CO declaration, the high court gave the union permission to rerun other ballots, which had been held previously using the same procedure for distributing the ballot papers. The CO wrote to prison governors informing them that prison officers could not have a democratic secret ballot in accordance with the law and keep home addresses private, unless the prison service could ensure delivery via the prison internal mail direct to prison officers. Although governors have indicated their willingness to comply with the CO's request, the CO will become aware of any abuses only if they are specifically referred to him for investigation. The CO does not make 'spot checks' on trade unions looking for abuses and it is quite possible that some union ballots are being run contrary to the law. The enforcement mechanism is a complaints-driven process.

<u>c) Complaints by Members to the CO about the Financial Affairs of Trade Unions</u>

Since the power of the CO to investigate the financial affairs of trade unions is a relatively recent development, the use of the provisions to date has not been widespread. In the majority of references to the CO the matters have been resolved through correspondence between the CO and the parties concerned. In all cases unions have been open and wholly cooperative with the CO. In all completed cases the CO has been satisfied with the explanations given or with the corrective action taken by the union. In all but one case the CO has relied on his own powers of

investigation, or has required documents to be produced under s.37A TULRCA 1992. In only one case has the CO used his powers under s.37B(1) TULRCA 1992 to appoint an inspector to launch a formal investigation into certain aspects of the financial affairs of a union.

The investigation was into the financial affairs of the POA. This followed a complaint from a union member about the administration of the POA financial affairs between 1992 and 1995. The investigation concluded that although the union had weak financial management systems there was no evidence of any fraud or misfeasance, and therefore proceedings would not be instigated against anyone.

The financial affairs of a trade union can in theory be subject to investigation from the CO, as and when there is cause for concern. However, the CO is reliant on disaffected members making specific complaints about the financial affairs of trade unions. Such concern might be aroused by a breach of financial procedure or the contents of audited accounts. This is really the only means by which the regulatory body could become aware of suspicious circumstances. Only on very rare occasions will the CO pick an issue of concern out of the annual reports. To date the powers provided by the law for the regulation of financial affairs have not been widely used, and have hence had a limited impact on trade unions.

6.3.5 Summary

The modest number of complaints which result in declarations being made indicates that most complaints made by union members must be unfounded, that trade unions are genuinely attempting to comply with the law and/or that the CO's application of the law has been narrow in its operation. However, in practice, the CO devotes most of his time to assisting unions and members to resolve differences by informal mechanisms. In this indirect way the procedure would seem to have considerable success. The cases which go to formal hearing and are published therefore give a somewhat distorted impression of the degree to which the system is utilised and effective. In those complaints where there was no formal hearing, the matter was resolved to the satisfaction of the complainants as a result of action or explanation by the unions concerned. In those cases resolved in this way, the procedure frequently

results in the parties developing a better understanding of their respective positions and the CO facilitating an agreement between the parties, on how the member's grievance can be dealt with by the union. In respect of union elections, the political fund and the financial affairs of trade unions, during the period 1985 to 1999 the CO had handled 185 complaints, an average of 13 per year. During that period 30 complaints required a formal declaration; and 2 cases were the subject of appeal to the EAT (Mr J Boxhall and Others v CPSA EAT/24/98; Mr England v PTC EAT 25/98).

6.4 Conclusions

Prior to the implementation of the TUA 1984 and the EA 1988 there had been a rudimentary level of legal intervention in the internal procedures of trade unions. This comprised two strands. First, the CO had a specific administrative function pertaining to trade unions. Second, union members had recourse to the courts if trade unions failed to obey the rule-book or the rules of natural justice.

The Conservative legislation created statutory rights that trade union members could enforce against trade unions in the courts. The creation of CROTUM and the expansion in the regulatory role of the CO constituted a significant alteration to the degree to which the law could intervene in trade union internal affairs. The remainder of this section analyses the impact of these changes.

The personal statutory rights accorded to members in the domain of membership and discipline has not resulted in significant numbers of cases being brought to employment tribunals. The reasons for this have been twofold. First, trade unions altered their rule-books and complied with the specific legal requirements. This compliance was based on the belief that the law could not be circumvented. Individual members were considered more likely to bring complaints if their personal rights were infringed than if the union committed a breach of procedure, whether of rule or statute. Simpson (1993) suggested that the possibility of bounty hunters actively seeking rejection of membership applications in pursuit of the £5,000 minimum compensation award should not be discounted. However, since CROTUM had no power to assist cases of unjustifiable discipline under s.3 EA 1988, no legal aid was available for individual members to finance such actions, and this may have

impacted on the number of claims made to employment tribunals. However, although there has not been much litigation surrounding the statutory rights of discipline and membership, it has struck at the heart of union disciplinary powers. The statutory rights could be argued to have had a significant impact because they have caused trade unions to change their union rule-books to reflect the statutory requirements.

The trade union movement has also been required to amend the Bridlington principles and stop the widespread practice of unions formally disciplining members for failing to take part in industrial action. In particular, the right not to be unjustifiably disciplined is an expansive right, covering all disciplinary action, not just expulsions or exclusions. Furthermore, 'unjustifiable' discipline is not synonymous with 'unreasonable' discipline. An employment tribunal is not required to evaluate the union's justification for the action or the proportionality of the response or to examine the reasoning of the union. Thus, even if, on the facts of the case, the action is warranted and the penalty imposed appropriate, if the reason for the disciplinary action is not permitted by statute, it is unlawful.

The provisions pertaining to both membership and discipline have significantly reduced union freedom to determine their own internal affairs. The provisions have also undermined collective responsibility and union solidarity (McKendrick 1988: 147). Whilst the volume of litigation cannot reveal whether legislation is being observed or disregarded, if the volume is low it might mean that trade unions are abiding by the law. Alternatively, it might mean trade union members are ignoring union transgressions. Nevertheless, as Dunn and Metcalf (1996: 74) observe, legal cases provide a valuable jumping-off point.

From an analysis of the complaints made by individual union members to CROTUM, it seems that the majority were either out of scope or dropped by the applicant. Although the majority of complaints to CROTUM concerning the case-study unions were related to specific breaches of statute, an analysis of the types of claims made to CROTUM reveals that the majority concerned alleged breaches of a union's rule-book rather than alleged breaches of statutory rights.

The evidence collected from the fieldwork also suggests overwhelmingly that many union members sought conciliation between themselves and their union, or wanted CROTUM to act as an arbitrator or ombudsman on some specific point. The experience of CROTUM was that in some cases trade unions did not have appropriate mechanisms for dealing with the grievances of individual members, and that quite often the member found himself or herself referred to the source of their complaint. Therefore, it appears that many people who contacted CROTUM assumed that he could investigate complaints on their behalf and referred to the Commissioner as the 'Union Ombudsman'. Of course, CROTUM did not have such power. If CROTUM had been vested with such powers, the impact on internal union processes might have been more dramatic.

The moderate number of applications CROTUM assisted leads to the conclusion that the role had a negligible impact and was an irrelevance in terms of reforming union government. There is little evidence that providing members with the facility to enforce rights against trade unions in the courts, with the assistance of CROTUM, resulted in any significant changes to union internal affairs. The traditional unpopularity of CROTUM amongst unions and unionists may have led to the suppression of a significant number of complaints.

However, there was evidence of a more indirect impact of CROTUM. The existence of the commissioner led trade unions to keep a more careful eye on the law to ensure compliance, and therefore stem the possibility of complaint. There was also evidence of trade unions tightening their internal procedures to ensure that rules accorded with legal requirements. In this respect, the threat of complaint to CROTUM may have been more profound than is actually borne out by the figures, in terms of the number of complaints resulting in court and remedial action.

Turning to the role of the CO, the COs annual reports for the period 1984-99 reveal a steady increase in the volume of work arising from complaints by trade union members, compared to previous years. Some of the complaints to the CO were not of merit and therefore have not warranted any approach to the body concerned. However, where they did, generally these matters were resolved either through

correspondence between the CO and the parties concerned or by means of informal meetings with the union or the individual, or by a combination of these methods. The evidence would suggest that most complaints could be dealt with in-house, with the operation of better grievance procedures. The CO has encouraged individual trade unions to improve their internal grievance procedures.

However, in the Employment Relations Act 1999 the new Labour government abolished CROTUM and transferred to the CO the power to determine member's complaints in relation to breaches of the union's own rules. This jurisdiction has been responsible for a sevenfold increase in applications to the CO, albeit from a low base (CO Annual Report 2000-01).

Table 6.4: Complaints Investigated by the Certification Officer post 1999

Types of complaint: Section:	2000-1	2001-2	2002-3
54 Union elections	11	8	4
82(2) Political fund	1	1	0
77-80 Political fund ballot irregularity	0	0	0
37 Financial affairs	6	5	1
Breach of trade union rules applications	48	57	28

The increase in the volume of applications to the CO is due mainly to the fact that, unlike CROTUM, the CO has no discretion over which cases are supported. The CO has to investigate any complaint made. This entails formally putting the complaint to the union and sending their response to the complainant. If either side wishes it, the CO must provide a hearing. The CO has no discretion to preclude cases where the papers may fail to demonstrate an arguable case for a breach. Further, unlike CROTUM or the courts, the CO has no power to turn cases away that are regarded as frivolous or vexatious; although, under s.256A TULRCA 1992, the CO does possess the right to refuse to entertain an application where the court or employment tribunal has an order in force that the applicant is vexatious.

Finally, the courts, following the principle in Foss v Harbottle, even in cases where internal procedures have been exhausted, have often viewed it as inappropriate to

intervene in union matters which are within the powers of the union to settle by its internal procedures. All this means that the resources of the CO and of trade unions can be taken up with issues where it is arguable that neither the substance nor the strength of argument really merits the expenditure of taxpayers' money. To date, the CO has found the majority of complaints by union members in this domain unwarranted (CO Annual Report 2000-2001). There is an increasing view in some trade unions that the CO's powers in this respect are becoming a 'burden on the business' of running trade unions (CO Annual Report 2000-2001). The Labour government's current framework has also been criticised by the CO, who has stated, 'I believe that there is a problem of inappropriate cases reaching a hearing' (CO Annual Report 2000-2001: 3). However, the relatively high number of applications received by the CO in 2000-1 might have been a temporary and transitory phase. The CO Annual Report for 2001-2 shows a reduction in general enquiries, from 410 in the corresponding period in 2000-2001 (CO Annual Report 2000-2001: 49) to a total of 280. It is believed that the reduction has resulted from a wider public understanding of the role and responsibility of the CO, following the abolition in 1999 of the Office of the Commissioner for the Rights of Trade Union Members (CO Annual Report 2001-2002: 42). It is also illustrative to note that the majority of applications to the CO fell outside the jurisdiction of the Office. These applications concerned inadequate representation of members by their union or were in relation to the provision of union benefits or membership.

There is little evidence that providing members with the ability to enforce statutory rights, through the courts via CROTUM or directly through the CO, has led to substantial reforms being made to the internal affairs of trade unions. However, some trade union officials believed that the introduction of the regulatory framework resulted in union members and the general public having confidence in the propriety of unions' internal affairs. Indeed, some officials from the case-study unions believe that the external regulation of their affairs now plays an important role in legitimising their activities.

Overall it is difficult to identify any general pattern that emerged in the context of democracy from the statutory developments examined in this chapter. Indeed, it

would possibly be too simplistic to expect this to be the case. A straightforward-cause-and-effect theory is difficult to establish, not least because unions are not homogeneous. The impact of the legislation was inconsistent, often depending greatly on the extent to which dissident members were willing to complain, and on the response of individual trade unions to such complaint.

Some of the complaints made via CROTUM and the CO against individual trade unions often resulted in time-consuming correspondence and activities. This restricted the action the unions could take and diverted resources from servicing their members in other respects. In this regard Conservative governments managed to add spoiling agencies to the anti-union legislative and policy agenda. That is to say, though 'independent', the presence and functions of the agencies maximised nuisance value by promoting individual against collective interests and freedoms (Lockwood 2000).

In short, the overwhelming evidence of the research is that the encouragement the Conservatives gave to trade union members to complain about the internal affairs of their trade unions fell upon 'deaf ears'.

Chapter 7 - Discussion of Findings

7.1 Introduction

The purpose of this chapter is to provide further analysis of attempts by Conservative governments during the 1980s and 1990s to determine the internal affairs of trade unions via legislation. In so doing, it draws together the results presented in chapters 4, 5, and 6 and discusses them in relation to previously published data and to wider developments in the union environment. In particular, it considers whether the legal measures introduced have made trade unions more democratic and moderate in their decision-making. As such, the chapter will seek to provide answers to each of the research questions previously outlined in chapter 3. These are reiterated below:

1. *Did Conservative balloting legislation pertaining to elections and the political fund result in changes to the internal affairs of trade unions?*

1. What impact did the introduction by the Conservatives of industrial action ballots have on the procedures, practices and behaviour of trade unions?

3. Did Conservative provisions granting individual members the right to complain about the internal affairs of trade unions lead to a significant number of members complaining about breaches of union rule or statute?

The first section of the chapter discusses the reaction of trade unions to the new Conservative legislation. The second section examines the actual impact of Conservative legislation on trade unions. The final section provides an overarching summary and conclusion.

7.2 The Trade Union Reaction to Conservative Policy

Chapters 4 and 5 demonstrated that on the introduction of the TUA 1984 all the case-study unions, with the exception of the EETPU and the CPSA, initially responded by refusing to conform to the legal requirements. The unions rejected the reasoning upon which the statutory controls were introduced, namely that unions were not sufficiently representative and accountable to their members. This response reflected the wider

trade union movement's disagreement with the legislation, which was based upon the contention that trade unions should remain free to determine their own internal affairs (chapter 1). The trade union movement's resistance to the legislation is demonstrated in the following quotes:

> It is vital that the union movement stands firm against this attack from Thatcher, which is designed to destroy trade union power it has nothing to do with democratising trade unions. (Arthur Scargill, NUM Conference 1983)

> The TUC General Council reject the government's use of compulsion on trade unions and therefore advise affiliates to retain their own rules. It is unacceptable to place constraints on unions as they must determine rules for themselves. The trade union movement will need its maximum strength to resist the legislative attacks on us that this government wishes to impose. (TUC General Council quoted in the ASLEF Executive Committee Report, June 1985)

At this juncture the labour movement was opposed to the state encroaching on their constitutions. However, it was noted in chapters 4, 5 and 6 that the situation within the majority of the case-study unions changed over time, as union leaders pragmatically accepted the legal controls imposed on the internal affairs of trade unions. In the case-study unions considerable emphasis was placed on conducting their affairs in accordance with Conservative legislation. This change in attitude reflected a developing acceptance amongst the wider union movement that certain changes, forced on them by Conservative policies, were permanent, (Syrett 1997). In 1986, Norman Willis, the then General Secretary of the TUC was to comment 'Balloting is here to stay because our members favour it' (TUC Annual Report, 1986: 451). He went on to argue: 'The fact is that the law is in industrial relations and cannot now be excluded - if it ever could.' (TUC Annual Report, 1986: 3) In 1990 Willis added:

> I tell you bluntly that we will not get commitment from members if we imply that we want to take away their right to a ballot on crucial issues like strikes and the election of union leadership. (Norman Willis, TUC Annual Report, 1990: 285)

By the late 1980s and early 1990s all the case-study unions (with the exception of the BFAWU) had, by and large, adapted their practices to the legislative requirements. This is consistent with, and confirms the findings of Steele (1990); Fredman (1992: 34), Kessler and Bayliss (1995: 191); and Undy *et al.* (1996: 25).

However, this compliance with Conservative measures did not mean that trade unions agreed with the legal reform. Trade unions remained cautious of the law and critical

of the Conservative perception of union governance (Undy *et al.*, 1996: 235). Whilst the union movement reluctantly complied with legislative provisions to avoid legal sanctions, it is evident from the case-study unions that they started to use the legislation strategically and opportunistically. The strategy the union movement adopted was to brand the Conservative intrusion into the internal affairs of trade unions as unwarranted and unreasonable, but at the same time to comply with the legislative provisions on balloting and the individual rights of union members in order to legitimise their activities (chapters 6, 7 and 8 respectively). The following comments illustrate the pragmatic acceptance by some trade union leaders from the case-study unions of the advantages of adapting to the changing circumstances:

> We are proud of our history, but confident of our future and alive to change. Let us guarantee that future by embracing change ... Some on the ultra-left of British politics claim that the last seventeen years have been lost years for the union movement. For us in the TGWU they have been learning years. We have learnt how to improve our democracy we have reshaped our communications, refocused our campaigning and learnt to understand public opinion matters. (Bill Morris, TGWU)

> Change is necessary in a changing world, you must embrace change or events will change you whether you like it or not. (Ken Jackson, EETPU)

7.3 Conservative Legislation and Trade Unions

7.3.1 Trade Union Election Ballots

This section addresses the aspect of Research Question 1, which is concerned with the impact of election ballots on trade union internal affairs. At one level, the introduction of secret ballots for elections can be viewed as a democratising measure. In the majority of case-study unions, prior to the introduction of Conservative legislation senior officials and members of the NEC were not directly elected by the wider membership. Officials were appointed, selected by a union committee or elected indirectly by the membership.

In respect to union elections, all the case-study unions, with the exception of the BFAWU, adapted to the uniform model rather than retaining their traditional individual practices. This finding is consistent with the research by Undy *et al.* (1996: 163), which found that 'election ballots had a significant impact on unions overriding existing practice'. The unions sought to comply with the detailed rules concerning the election of candidates, election addresses, balloting constituencies and the conduct of

elections (Lockwood 2000; Barrow 2002). Secret ballots provided all members with the opportunity to cast their vote for the candidate of their choice following collective participation at the workplace, in the form of meetings and discussion. In this respect, the requirement of balloting was complemented by participative forms of democracy. Trade unions were free to declare support for the candidate favoured by the union.

As concerns union elections, groups and factions have engaged in vociferous and dynamic campaigning. Groups and factions contested and interacted strongly to advance their interests and views amongst the membership (chapter 4). The law granted candidates from the right and left the opportunity to challenge one another for seats on the NEC and for other senior positions. The increased competition between candidates has been reflected in ASLEF ballots for the position of general secretary. In 1997 the left-wing candidate Michael Rix was successfully elected. However, in the 2003 election a recognised right-wing candidate with links to the BNP secured the position (chapter 4). In some unions this opportunity would never have arisen, because competitive elections for posts were not held. This has in some unions increased the factional competition between the political groups that exist within the union and, arguably, democracy.

Several election ballots have resulted in the election of a new generation of trade union leaders with links to left-wing groups, such as Militant, the Socialist Labour Party and the Socialist Alliance. The leftward shift in the centre of gravity in British trade unions during the period 1997-2003 is evidenced by the election of Bob Crowe at the RMT, Derek Simpson at the AEEU, Tony Woodley at the TGWU, Kevin Curran at the GMB and Dave Prentice at the UK's largest trade union, UNISON. The election of these left-wing trade union leaders has been regarded as an indication of the growing radicalisation of the trade union movement. These trade union leaders have been labelled the 'awkward squad' by the media and New Labour (Smith 2003). It is ironic that it is exactly this breed of trade union leader that the legislation was designed to prevent being elected (Welch 2002). In this respect, the results outlined in chapter 4 add to the Undy *et al.* (1996: 193) study by demonstrating how opinion-formers and activists gained influence in trade unions to champion their factional causes. Groups and factions in ASLEF, RMT, EETPU, CPSA and the TGWU have

been able to use both formal and informal mechanisms to either strengthen their influence or at least retain their influence despite the introduction of the legislative provisions, which sought to undermine their position within the union.

In sum, and in relation to the aspect of Research Question 1, concerned with union elections, the introduction of election ballots caused changes to the method of selecting senior officials in all but one of the case-study unions. It is, however, noteworthy that the law did not have the sort of impact on the political complexion of the union leadership and on union-policy making that had been presumed at the time of the introduction of the Conservative legislation (Smith 1993; Undy *et al.* 1996; Brown, Deakin and Ryan 1997; chapter 2; Barrow 2003).

Finally, the current Labour government has proposed to lift the requirement on trade unions to hold a postal ballot of their membership when electing or appointing their presidents, or equivalent officials, when the person taking up this position is already a member of the union's executive who has been elected to that position by a statutory ballot (Part 6, Employment Relations Bill 2003: 34). Aside from this relaxation of the law, the Labour government has no intention of liberalising further the statutory constraints on union elections introduced by the Conservatives.

7.3.2 Political Fund Ballots

This section addresses the aspect of Research Question 1 concerned with the impact of political fund ballots on trade union internal affairs. The increased regulation of political funds has been counter-productive, according to the results of the ballots held by the BFAWU, ASLEF, RMT, EETPU and NATFHE. The belief that many votes would go against the retention of a political fund has been shown to be inaccurate. This is reflected not only in the results of the individual case-study unions, but also in the wider literature (Grant 1987; Grant and Lockwood 1999; Leopold 1986; Leopold 1997 and 1999). In the 1985-8 round, thirty-eight trade unions were compelled to hold ballots if they wished to retain their political funds. All of them secured resounding 'yes' votes. Moreover, a further seventeen went on to hold ballots in order to establish a political fund for the first time, and secured substantial majorities in favour (Grant 1987). In the subsequent 1993-8 round of ballots all unions, except for the CPSA, retained their political funds.

Grant and Lockwood (1999) have compared the results of the 1985-8 political fund ballots with those of 1993-8. Taking into account the impact of union mergers on the 1993-8 results, they make a number of key observations. Firstly, their data shows that the turn-out for the ballots held between 1993 and 1998 was in many cases significantly lower than that obtained for those held from 1985-8. The average turnout in the 1985-8 ballots was 61 per cent and ranged from 23 to 92 per cent by union. For the 1993-8 period, turn-out stood at 40 per cent and ranged from 19 to 88 per cent. This confirms the detrimental impact that the switch from workplace ballots to fully postal ballots had on membership participation, highlighted in chapters 4 and 5 in respect of the case-study unions. In percentage terms, the average number of votes in favour of retention of political funds remained virtually the same over the two periods: for the 1985-8 ballots it stood at 78 per cent while for 1993-8 it was 82 per cent. Though the average 'yes' vote remained similar, seventeen unions increased their 'yes' vote by between 1 per cent and 30 per cent during 1993-8, while thirteen unions saw theirs decrease by between 1 per cent and 38 per cent. The range of 'yes' votes among unions has also altered. For 1985-8 it ranged from 54 per cent to 93 per cent, but for the 1993-8 period it was between 35 per cent and 93 per cent. Finally, eleven unions fell below the average 'yes' vote during 1985-88 and twenty-one above, while for 1993-8, ten fell below the average and twenty above.

The Conservative legislation resulted in the promotion of trade union political funds rather than their demise. Political fund ballots demonstrated to the union movement that it has the capacity to mobilise its members if it consults them in the right way (Grant and Lockwood 1999; Leopold, 1997 and 1999). The result of the legislation in national terms is that an even larger amount of funds have now become available for political campaigning. The total funds available for political expenditure increased dramatically, from £8.5m in 1984 to £18.1m by the end of 1994 (CO Annual Reports 1984 and 1995; Barrow 2002). More recent figures show a slight fall with total political funds standing at £15.8m at the end of 1998 (CO Annual Report 1999-2000). The results of these ballots clearly demonstrate that there is a broad measure of support for political funds among the majority of membership across different union boundaries. Union members have, to date, responded to the plea from the union movement that it is necessary for a union to have a political fund to ensure a 'voice'

and to represent the interests of the membership. Furthermore, it has consistently been made clear to individual members that if they do not agree with the political fund they can always contract out, but they should not deny others the opportunity to contribute.

There can be no doubt that the success of trade unions in this domain represented a considerable embarrassment for the then Conservative government. It is apt to say that the Conservative legislation pertaining to political fund ballots represented a spectacular 'own goal' (Grant 1987). In the case of political fund ballots we have seen that the membership of all the case-study unions, with the exception only of the CPSA, have voted overwhelmingly in support of the continuation of such funds. Balloting in this domain has had two beneficial affects for trade unions. First, it has improved democracy by giving the wider union membership a direct voice on the issue. Second, the results have strongly legitimised their political activities. The introduction of political fund ballots has had unintended consequences, as far as the Conservatives were concerned.

In sum, the research findings contribute to answering Research Question 1. The evidence demonstrates that all trade unions complied with the legislation, changing their existing practice in this domain, but that this did not result in the ordinary member voting against the establishment or continuance of political funds.

7.3.3 Industrial Action Law

The material located in this section addresses Research Question 2, concerned with the impact of industrial action ballots on the procedures, practices and behaviour of trade unions. Chapter 5 demonstrated that prior to the introduction of the legislation requiring industrial action ballots, the majority of case-study unions did not use this mechanism as a means to elicit the views of members on the decision to engage in industrial action. In this respect, the legislation on industrial action ballots could therefore be regarded as improving the democratic rights of trade union members. Industrial action ballots were acknowledged by trade union officials (national officials and shop stewards) as a useful mechanism for communicating with the membership (Kessler and Bayliss 1995: 191; Fredman 1992: 34). Ballots have provided a means

for trade union members to express their strength of feeling on workplace issues, to both the employer and trade union.

The informants from the case-study unions indicated that trade unions attempted to comply with the legal obligations surrounding industrial action (chapter 5). In particular, senior trade union officials tried to ensure that unofficial action was not taken (Lockwood 2000). However, unofficial action was prominent in disputes on London Underground involving both ASLEF and RMT members, and this was discussed in chapter 5. Moreover, survey evidence suggests that the Conservative legislation did not succeed in one of its primary targets, the eradication of unofficial industrial action (Millward *et al.* 1992; Elgar and Simpson 1993; Elgar 1997; Brown, Deakin and Ryan 1997); however, it is apparent that the law has contributed to a significant decline in unofficial action (see below, p. 217).

The balloting legislation caused changes to the method by which industrial action was called. However, if Conservative administrations thought this would encourage members to be more inclined to vote to avoid confrontation with employers, and in so doing to take a less conflictual and more accommodating stance than would have been the case under the old legislative provisions, the results from the BFAWU, ASLEF and the RMT indicate that this was not necessarily the result. Rather in recent years more and more workers have shown a readiness to engage in industrial action (Welch 2003). The evidence presented in chapter 5 also demonstrates that the perception of the interviewees from the case-study unions was that industrial action ballots had improved the position of trade unions in negotiations and legitimated the decisions of their senior officials. The balloting process provided shop stewards with the opportunity to mobilise support amongst the rank-and-file membership for industrial action. This was reflected in the fact that the majority of case-study unions won ballots that they held. Some union officials indicated that a positive ballot led to a negotiated settlement of the dispute, without the need to undertake industrial action. In this context, industrial action ballots were seen as an important device in bargaining strategy. These findings are supported by the wider literature (Brown and Wadhwani 1990; Mackie 1992; Elgar and Simpson 1993; Elgar 1997; Brown, Deakin and Ryan 1997). Mackie (1992: 310-11) remarked:

> The introduction of balloting in connection with industrial action marked a significant stage in the Conservative government's attempts to control the activities of trade unions. The requirement to show majority support among those workers likely to be involved was intended to moderate calls for industrial action. Their moderating influence is less evident than their use as a negotiating tactic.

Research by Elgar and Simpson (1993), which surveyed 846 union negotiators, reported that, following a ballot, disputes had been settled in negotiation without the need for industrial action to go ahead. Elgar and Simpson (1993: 13) noted that:

> Whilst it was not possible in each case to know how the terms of the settlement were improved from a trade union point of view, the majority of union officials' comments clearly indicated that positive results were seen to have strengthened their bargaining position. In industrial action the majority of members vote 'yes' for industrial action either to express their strength of feeling on the issue or in the hope a 'yes' vote will prompt the employer in to a course of action that is more in line with the interests of the membership.

During the 1980s and early 1990s the case-study trade unions had to deal with employers who were adversarial in their approach to conducting industrial relations (Gospel and Lockwood 1999). In response to these managerial offensives, ballots often produced votes in favour of industrial action. This was noticeable in ASLEF and the RMT, where the membership became particularly active in attempting to safeguard and advance their terms and conditions of employment in the privatised rail industry by engaging in industrial action (Darlington 2001). It was also evident in the higher-education sector of NATFHE, where the erosion of working conditions alienated members to such an extent that they voted in favour of industrial action for the first time in 1990. Trade unions became adept at carefully planning and preparing members for involvement in disputes. In a high proportion of cases, ballots resulted in support for the proposed industrial action (Millward 1992; Metcalf and Milner 1993; Elgar and Simpson 1996: Elgar 1997).

The fact that the majority of ballots held resulted in 'yes' votes and were seen to have improved the union's negotiating position can be regarded as unintended consequences of the legislation. The evidence from the research is that industrial action ballots did not undermine the cohesive relationship between trade unions and their members. Although they gave the individual member an increased role in union decision-making, unions successfully conveyed the view to members that collective solidarity and action was still necessary in order to protect and advance the interests of members in the workplace (chapter 5). The law acts as a blunt instrument because whilst it can require changes to the decision-making mechanisms of trade unions, it

cannot influence the motivation or instrumental behaviour of members' voting habits or willingness to participate in trade union affairs (Lockwood 2001). The literature surrounding the determinants of membership participation suggest a more complex situation, identifying a multitude of factors which directly impinge on the extent to which members are active within the union (Hirschman 1970: 82; Klandermans 1986, 1984; Perline and Lorenz 1970; Stein 1963; Spinirad 1960; Lipset, Trow, and Coleman 1956 Dean 1954; Sayles and Strauss 1953; Willman 2001: 100; chapter 1).

The case-study trade unions found that Conservative legislation required them to comply with detailed and demanding balloting requirements (Undy *et al.* 1996; chapter 5; Elgar 1997; Brown, Deakin & Ryan 1997). However, by painstaking planning, attention to detail, good organisation and effective communication between union officials, it was possible for trade unions to accord with the law. The ability of trade unions to adapt their procedures to the demands of the law and their ability to use industrial action ballots as a weapon against employers clearly ran counter to the intentions of the Conservative law-makers.

The evidence from the case-study unions was that balloting per se does not act as a deterrent against industrial action. In this respect, the research findings are in line with those of Dunn and Metcalf (1996) and Brown, Deakin and Ryan (1997). This research concluded that broader legislative, political, social and economic changes, together with employer policies, made trade unions more careful about calling industrial action, not the requirement to hold a ballot. In respect to industrial action, it is difficult to distinguish the precise impact of the law on strike activity from other factors that have contributed to a reduction in industrial action (Dunn and Metcalf, 1996; Edwards 1995). It is particularly difficult to separate the impact of industrial conflict legislation from the broader environment. In short, it is evident from this research that these 'other factors' were often important reasons for trade unions not embarking on industrial action.

However, industrial action balloting did have some negative implications for trade unions in terms of the dynamics of the balloting process, not just in terms of cost and organisation. The balloting process gave the employers scope to try to influence the

decision-making of union members, by threatening disciplinary action against anyone who participated in industrial action. Both NATFHE and the CPSA experienced this practice, claiming that it thereby undermined the democratic decision-making of union members. These factors were particularly stressed by NATFHE and the CPSA as the reasons for 'no' votes in industrial action ballots (chapter 5). The impact of the balloting legislation on the mobilisation of trade union members differed amongst the trade unions. BFAWU, RMT and ASLEF have, to date, had a more favourable experience than the other case-study trade unions in this respect. The outcome of ballots was dependant on the industrial relations context. In particular, the strength of union presence in the workplace, employer tactics, the economic environment and membership attitudes were important relevant factors determining ballot results (Undy *et al.* 1996; Elgar and Simpson 1993; Elgar 1997; Bradley and Leach 2003).

Chapter 5 also demonstrated that the threat of sequestration of a trade union's assets has resulted in a decline in unofficial action. This finding is consistent with that of earlier studies, such as those of Brown and Wadhwani (1990) and Dunn and Metcalf (1996). In fact, the steady increase in the willingness of employers to take legal actions against unions and striking workers in relation to unofficial and unlawful industrial action (breaches of balloting requirements or action falling outside the definition of a trade dispute) posed significant problems for trade unions (McKay 1996). Most legal challenges took the form of the interlocutory injunction; that is, a court order to prevent the onset or continuation of industrial action, issued at the discretion of the High Court, pending a full trial rather than an action for damages. Between 1980 and 1995 there were 201 legal actions against unions, including 166 injunctions (McKay 1996: 11-14; Addison and Siebert 1998). Approximately one-third of the injunctions taken out since 1980 were based on these balloting provisions (McKay 1996: 16; Addison and Siebert 1998). Some large financial penalties were imposed. Examples include a £650,000 fine on the National Graphical Association in 1994 and the sequestration of £707,000 from the National Union of Mineworker (Marsden 1985: 157). In this context, ballots for industrial action inhibited trade union behaviour reducing union power, because the rules were extremely complex, technical, ambiguous and restricting, thus leaving unions exposed to potential challenge in the courts on several counts (Deakin and Morris 1995: 794). McIlroy

(1999: 52) suggests that the employment legislation regulating industrial action introduced to Britain by Conservative governments between 1980 and 1993, and which has endured under Britain's New Labour administration, continues to restrict fundamental union purposes and traditional forms of action.

The Conservative legislation relating to industrial action was also used by some trade union leaders to justify changes in union procedures that secured increased power for those in control of union affairs, at the expense of other groups, committees or officials. The leadership of the TGWU and the EETPU used the law pertaining to industrial action to justify the introduction of procedures that centralised power within the unions, undermining the traditional autonomy of shop stewards. Shop stewards could not determine the timing of ballots, and they were required to confer with senior officials prior to taking a particular course of action.

The decision of the respective leaderships to centralise decision-making, taking authority away from shop stewards, was made despite the fact that the law demanded this only in exceptional circumstances. In the case of Tanks and Drums v TGWU 1992 ICR 1, the Court of Appeal acknowledged that the law allowed unions to leave the final decision about resort to industrial action to the union official involved. Moreover, the centralisation of decision-making was implemented in the 1980s, at a time when bargaining arrangements were becoming fragmented, placing more responsibility on local officials. It could therefore be argued that the leaderships of the TGWU and EETPU embarked on a process of centralisation at a time of countervailing tendencies, that is, during a period when the level of pay-bargaining became more decentralised, in response to employer-led policies. For example, in the EETPU, when industries in which they represented members moved from national collective bargaining, to local collective bargaining, the role of the shop steward was initially enhanced. One national official observed that:

> Industrial branches became increasingly important due to the spread of local bargaining. The shift from national collective bargaining to local bargaining also increased the influence and profile of shop stewards dramatically.

This is also illustrated in the following comments from two other national officials:

> The stewards have had to learn to be more cautious, particularly in relation to industrial disputes. Beating the table and walking out is no longer acceptable.

> Shop stewards needed a broader and better understanding of politics than they used to have. Shop steward training and the functions performed by shop stewards are more important than ever.
>
> The shift from national to local bargaining and has definitely raised the profile of lay activists within the EETPU.

However, although these comments would seem to raise the importance of the role of shop stewards in the EETPU as actors in the industrial relations process, evidence gathered from official union documentation, the organisation of the bargaining process and observation of the bargaining process at London Electricity demonstrates a different perspective. For each area of bargaining the procedure, policies and tactics adopted are controlled by head office, under the guidance of lead national officials. The reality is that shop stewards have a minor role in negotiations over pay. Whilst local bargaining may have created greater opportunities for increased activist involvement at local level, senior officials within the EETPU have retained control over the process. One national official expressed the following view:

> It is vital for union cohesiveness and effective collective bargaining that the process is in the control of senior union officials.
>
> The centralisation process in the TGWU and EETPU has enabled the union to exert greater control over the activities of national officials, shop stewards and work groups.

The degree to which decision-making was devolved to lower-level officials in relation to industrial bargaining was an area of substantial difference between the trade unions. In the cases of both ASLEF and the RMT, the changes have bolstered the position of local officials in respect of the bargaining process. A similar position is also detectable in the BFAWU, where bargaining has also become more devolved. In the BFAWU, the RMT and ASLEF there has been a much greater degree of decentralisation and autonomy for branches, as a result of the organisational change that has taken place. This contrasts with developments in the TGWU, EETPU and the CPSA, where changes that have taken place have tended to have the reverse effect, concentrating power. Senior officials within the latter unions have attempted obtain control of the bargaining process. Shop stewards have not become key actors in the bargaining process in these unions. In the CPSA privatisation resulted in the end of central service-pay bargaining and caused changes to the level at which negotiations

were conducted. However, the union introduced a new layer of organisational structure, through which officials have maintained control of the negotiating process. New regional and departmental units were created and these received instructions on strategy and tactics from head office. CPSA head office also issued detailed guidelines on the requirements for industrial action ballots. In respect of NATFHE, the position differed between sections of the union. In the FE sector the collective bargaining process became more devolved, while in the HE sector it remained centralised. This was mainly due to employer policies in respect to collective bargaining.

In sum, the material enables conclusions to be drawn on Research Question 2, concerning the impact of industrial action ballots on the procedures, practices and behaviour of trade unions. All trade unions (except the BFAWU) have complied with the Conservative legislation, adopting a secret postal ballot of the membership as the mechanism for calling industrial action. An assessment of the impact of legal change is often problematic, since it can be difficult to know whether it is the law or other related changes that have produced an observed result. Secret strike ballots have increased the financial cost to unions and have had several burdensome effects upon union organisation. Because the ballot procedures are extremely complex and cumbersome, it has been difficult for unions to ensure that they always act within the law. However, trade unions have used industrial action ballots as ammunition in their bargaining strategy (Lockwood 2003). They provide opportunities to mobilise support amongst members and a credible strike threat to test an employer's final offer (Martin *et al.* 1995).

Furthermore, whilst the Conservative legislation, now condoned by New Labour, may have contributed to a significant fall in the number of working days lost (WERS 1998; Waddington 2003) industrial disputes have not been consigned to the history books (ACAS 2001; Lockwood 2003). Indeed, the last three ACAS annual reports show ACAS as having conciliated in almost 1,500 disputes each year (ACAS 2001, 2002, 2003). Figures prepared by the Office of National Statistics (ONS) show that for the year 2002 the number of days lost to strike action rose sharply to 1.3 million, the highest figure for more than a decade and more than double the number lost in the

previous two years. However, as when strike activity was at its height in the 1970s and tended to be concentrated in particular sectors (such as coal-mining, engineering, docks and public transport) the industrial unrest in 2002 has been confined to industries, such as the railways and the Post Office. During the last three years there has continued to be a stark comparison between the levels of strike activity experienced by the public sector in contrast to the private sector. Public sector disputes accounted for 76 per cent of the total number of days lost in 2002. The figure increased in the twelve months to April 2003 to 87 per cent for the public sector (Bradley and Leach 2003). The total number of disputes for the year was 146, which is a fall from 2001, when there was a total of 194 disputes, although an increase from 2002 when there were 135 strikes. It has been suggested that there might be some link between membership growth and increased levels of industrial action (Kelly 1988). Two of the case-study trade unions, the RMT and ASLEF, who have had a high profile for engaging in industrial action over the past three years, have seen increases in membership. John Kelly, the London School of Economics Professor of Industrial Relations, has remarked 'militancy is no guarantee of members ... but when people see unions doing something they are more interested in joining' (Bradley and Leach 2003).

7.3.4 Workplace Ballots and Postal Ballots

The material included in this section pertaining to workplace and postal ballots enables observations to be made on the impact of Conservative balloting legislation on the political complexion of trade unions, an issue relevant to answering both Research Questions 1 and 2 (see 7.1. above). The Conservatives assumed that, through the use of secret ballots, greater individual participation in trade union affairs could be procured (chapters 1 and 2). The evidence from the case-study unions is that on the implementation of workplace ballots in 1984, significant improvements in participation were secured. Workplace ballots proved popular with members. Participation rates of 65% were not unusual. For example, in ASLEF, which previously balloted members at branches in union elections, the turn-out rate increased from 29 per cent to 65 per cent. Union officials reported that workplace ballots proved to be a useful mechanism to maintain essential elements of collective decision-making. Thus it could be argued that workplace ballots facilitated greater

democracy in trade union government, by providing the opportunity for rank-and-file members to determine key decisions, rather than unelected bodies.

However, when postal balloting was introduced, turn-out figures changed substantially. The case-study unions experienced a dramatic fall in voter turn-out. In ASLEF and the RMT participation rates fell dramatically, from an average of 65 per cent to 30 per cent. In the TGWU participation rates in some ballots were as low as 18 per cent. Trade union officials at the case-study unions indicated dismay about the impact of postal balloting on membership participation. In this context, Conservative legislation which was supposedly designed to enhance union democracy has been seen to have the opposite effect. It was suggested that a return to workplace ballots with a legal requirement on employers to provide facilities for such ballots and time for the conduct of union meetings prior to their being held would lead to greater participation in union affairs, and hence strengthen democracy in trade unions.

The low participation rates suggest that postal balloting is not an effective and genuinely representative method by which to enhance democracy. Both chapters 4 and 5 presented evidence from the case-study unions that it is becoming increasingly difficult to encourage significant rank-and-file members to vote. It is apparent that when members are isolated in their homes they forget to vote or are indifferent about exercising their democratic right. The requirement to use secret postal ballots rather than workplace ballots meant that trade unions lost a degree of what might be referred to as 'membership mobilisation'. Local officials (stewards, branch delegates and section committee members) played a critical role, encouraging members to vote at the workplace. The degree of vigour with which rank-and-file members were pursued to vote by local officials played a decisive role in determining turn-out in ballots.

Hence, when ordinary rank and file members were required to cast their vote in private they became disinclined to vote, whereas office-holders and activist members remained keen to express their voice through the ballot box, and did so. Through secret postal ballots the mood and political complexion of such activists was instrumental in decision-making. In this context, postal ballots appear to have rebounded on the Conservative law–making intentions.

In sum, the information pertaining to workplace and postal ballots enables observations to be made on the impact of Conservative balloting legislation on the political complexion of trade unions, an issue relevant to answering both Research Questions 1 and 2. The use of secret ballots for the election of senior officials, the political fund and industrial action did not necessarily facilitate a change in the political complexion of trade union leadership or of the political activities of trade unions, as was intended by the Conservative legislation. The overwhelming evidence from the case-study unions is that whilst many ordinary rank-and-file members are too apathetic to participate in the process, the politicised member and office-holding activist do participate, thereby skewing the vote in the favour of the positions that they hold on key issues.

7.3.5 Statutory Rights of Complaint, the Individual Member and Trade Union Democracy

This section addresses Research Question 3, concerning the impact of granting individual members the right to complain about the internal affairs of trade unions. Conservative policy was not confined to encouraging the membership to participate in union affairs through secret ballots on key decisions. It was also based on 'enticing members' to use all possible avenues for legal challenges to trade union decisions. Trade union members were granted a wide degree of control over their unions through statutory rights. The statutory rights relating to union membership and discipline amounted to significant restrictions on the right of trade unions to determine their own affairs (chapters 1, 3, 5; Lockwood 2000).

The legal provisions meant members could be excluded or expelled from a union only in circumstances expressly permitted by legislation. Chapter 6 demonstrated that case-study unions have attempted to observe these statutory requirements, albeit reluctantly. The threat of legal sanction meant the unions fully embraced the changes imposed by the law pertaining to the relationship between union and member. The evidence from the case-study unions was that the provision relating to 'unjustifiable discipline' was particularly resented. It was regarded as undermining the collective position of organised labour by giving individual members a right not to strike if they so chose, notwithstanding a properly conducted strike ballot. To this end, the

majority of trade union officials interviewed labelled this a 'scabs' charter. The fact that individual members had the right to complain to an employment tribunal, with the threat that substantial financial compensation could be awarded, acted as a deterrent against breach of these statutory rights by the case-study unions.

In terms of the number of complaints to the court, via CROTUM and the CO, the evidence is that large numbers of trade unionists have not been persuaded to involve themselves in the internal affairs of trade unions by accessing these routes of challenge (Lockwood 2000). The legal measures introduced have not acted directly to increase direct participation of members in union affairs, and hence democracy. For example, successful challenges to the union organisation of elections under this legislation have not been numerous. In the domain of union elections, this is because breaches of many of the electoral standards are dependent on a degree of union culpability. For instance, the duty to ensure every member has the opportunity to vote is not actionable if the breach was accidental. The duty is to see that 'as far as reasonably practicable' every member has the opportunity to vote. So, where there is an administrative error, there is no breach of this requirement (Undy *et al.* 1996).

However, if the failure is deliberate or not in good faith, then no matter how small or insignificant the breach, a declaration and enforcement order will be granted. Where irregularities have been documented, they have been caused mainly inadvertently or accidentally and so have not been the cause of litigation. However, as chapter 8 emphasised, the TGWU, NATFHE and RMT all introduced constitutional change as a result of complaints by dissident members. Nevertheless, the number of union members willing to involve themselves in internal union government by complaint to official bodies was low. In this context, there is little evidence to suggest that members' fundamental loyalty to unions has been destroyed by the Conservatives' initiatives in this domain. Encouraging members to complain about internal union rules had little impact.

The unions were critical of the decision by successive Conservative governments to subject their internal affairs to increased scrutiny by external agencies and the courts. They were prepared to accept some extensions in the role of the CO but were hostile

to the development of CROTUM. In chapter 8 it was found that one response to this development from several case-study unions was to become more careful, perhaps even inhibited in their actions, in an attempt to ensure compliance with legal requirements and the observance of rule-book provisions. Rule-books were modernised and redrafted in an attempt to reduce ambiguity and remove fertile areas of dispute. In this respect, the threat of complaint had a deterrent effect on trade unions, in a way similar to that which some have claimed, the legislation on industrial action had (Brown and Wadhwani 1990; Dunn and Metcalf 1996). At the very least, the measures caused administrators inconvenience and bureaucracy, particularly when members did complain. Such complaints were often of a technical nature and time-consuming to resolve. The complaints could require the application of significant administrative resources, which diverted the focus of union officials from other important union matters. It became apparent to trade unions that it was much better to deal with disputes in-house than have to deal through external agencies.

Subjecting trade union internal government to increased scrutiny, via the creation of CROTUM and the CO, produced some rather contradictory outcomes in regard to union democracy. It could be claimed that the threat of complaint increased the accountability of trade unions to their members and improved democracy. Whilst there was little evidence of widespread changes to union internal government, caused by the role of such agencies, there was evidence that their existence encouraged trade unions to improve their internal disciplinary and grievance procedures. Such disciplinary rules and procedures promoted fairness and order in the treatment of members.

However, these developments were initiated and directed by head office, leading to greater bureaucracy and centralisation. Head office laid down guidelines for branches and local officials relating to discipline and membership. The consequence of this was that head office began overseeing the actions and activities of branches in these areas. For example, in the 1990s the TGWU leadership and the then moderate 1993 ASLEF leadership both used the law as a justification to impose greater scrutiny over the actions and words of branches. This was done with the stated aim of 'ensuring that they did not act in a way that might bring the union in contravention of the law'

(lead national official, Transport). Branches were required to provide detailed information about their activities, seek authorisation for public statements, and have approved any disciplinary action taken by branches against members. In both unions, local officials expressed concern at the increasing interference in branch affairs by central office. This took away a discretion traditionally enjoyed by branches. The establishment of union watchdogs resulted in a centralisation of power and less democracy.

In sum, the evidence helps answer Research Question 3. Conservative legislation granting individual members the right to complain about the internal affairs of trade unions did lead some members to assert their rights, but such complaints were not widespread. However, the precise impact of legal provisions in this domain was uneven, some having a greater impact on the internal affairs of trade unions than others. The statutory rights of complaint provided to trade union members by the Conservative legislation produced changes to union rule-books, in respect to membership and discipline. They did not result in a significant number of claims being made against trade unions at employment tribunals. Neither did the existence of CROTUM and the CO result in significant numbers of complaints being made against trade unions in the High Court. The provisions have been little used. This demonstrates further the instrumental behaviour and 'narrow conception' some members hold in regard to participating in union affairs. Many union members are not sufficiently interested in the general administrative affairs of the union to complain about technical procedural breaches of rule or statute pertaining to union governance. The law was not used by dissenting members to bring a breakdown in union government by challenging disciplinary processes, disrupting decision-making or undermining union cohesion (Moher 1995). The individual members did not use the statutory rights as a weapon to hinder trade union activities; the legal regime has not, to date, had a destabilising effect on the operation of trade unions (Elgar and Simpson 1996). Trade unions have adapted to the new regime and worked within it; they have not been defeated by it (Fosh *et al.* 1993).

However, some union members are prepared to complain if their direct personal rights concerning membership and discipline have been infringed by trade union officials.

The Conservative legislation might have had greater impact in calling union leaders to account if it had concentrated on extending the personal rights of trade union members, particularly with the threat of compensation payments attached. These could have been chased by 'bounty-hunter members' through the courts or the CO. However, it appears that this was adjudged a step too far for the Conservative governments of the 1980s and 1990s.

7.4 Conclusion

With regard to the internal affairs of trade unions, the Conservative legislation of the 1980s and 1990s led to the wider use of balloting and to changes in the relationship between trade unions and their members (chapters 4, 5, 6 and 7). The overall impact of the legislation on union governance has been highly complex.

Changes to the influence of factions/groups and the political complexion within trade unions have developed in a complex manner, and differed substantially amongst the case-study trade unions. In the areas of union governance and industrial action, changes influenced by factional group activity have been much less pronounced than in the past in the TGWU and EETPU (Undy *et al.* 1996). The hostile environment in which the unions were operating brought about a realisation that it was not in the interests of individual unions to become distracted by internal strife from the external challenges that they faced. During the 1990s the cases of the TGWU and the EETPU demonstrated that the respective leaderships of each union built up a strong-power base drawing decision-making and control back to the centre (chapters 4, 5 and 6).

It was also particularly evident from the case histories of the BFAWU, ASLEF and the RMT that at various junctures in time significant groups have been successful in placing pressure on union leaders for organisational change. The respective powerful groups within the trade unions have been able to force changes in union constitutions, resulting in more devolved union government, which can be contrasted directly with the developments that have taken place in the TGWU, EETPU, CPSA and NATFHE, all of which have become more centralised (chapters 4 and 5).

Furthermore, groups and factions in some trade unions have also been able to use both formal and informal mechanisms to either strengthen their influence or at least retain their influence, despite the introduction of legislative provisions, which sought to undermine their position within the union. This has been most evident in respect of the BFAWU, ASLEF and the RMT (chapters 4 and 5).

In respect to the political complexion of the case-study unions, in ASLEF, the RMT, NATFHE and the CPSA it has been particularly noticeable that changes have occurred during the 1980s and 1990s. The changes have been caused by shifts in the political control of the union. In ASLEF and the RMT, the 1990s witnessed the growth and strength of candidates representing left-wing groups, such as Militant, the Socialist Labour Party and the Socialist Alliance. This resulted in the election of left-wing national leaderships and the election of socialist shop stewards. Developments in the privatised rail industry, far from weakening union power, have had the opposite effect, enhancing the role of militant groups within the respective unions. These developments have both been influential factors in bargaining decentralisation and diffusion.

In contrast, in NATFHE and the CPSA during the 1990s there was the emergence of a moderate or rightward-leaning group, which contributed to a fall in militancy and alterations to democratic structure. In the CPSA, the membership contained its fair share of traditionally moderate and relatively inactive members. This was one reason why the moderate leadership did not face demands for a more militant stance against reforms to the Civil Service. It also helps explain how the leadership was able to implement the constitutional change that it desired without significant opposition.

In respect to the EETPU, the moderate- right-wing group remained in control of the union, with an almost unchallenged ascendancy during the 1980s and 1990s. However, as identified in chapter 6, this position has not remained, following the merger with the AEU and the creation of the AEEU. The general secretary election held in 2002 resulted in the then right-wing holder of the position being defeated by the left-wing candidate.

An analysis of the respective unions reveals that changes to the processes of internal union government have been significantly influenced by the nature of its leadership. Undy *et al.* (1981: 326) remarked:

> A charismatic and strong general secretary is evidently vital to the execution of formal alterations and administrative innovation. The general secretary usually makes the case for rules revisions at conference, is responsible for determining appropriate boundary changes and is also responsible for overcoming any resistance. If interested parties such as local officials had to be persuaded, induced or coerced, this was generally seen as a task for national officials and especially the general secretary.

The general secretary is often the pivotal shaper and mover in constitutional reform. The direction and form of change was greatly affected by the views that particular general secretaries took of their strategic requirements and power position. In this respect Marino (BFAWU), Rix (ASLEF), Morris (TGWU) and Knapp (RMT) were all key figures in initiating and implementing change in their respective unions. The nature of the changes that these respective leaders have introduced reflects their attitudes and objectives. Marino at the BFAWU and Rix at ASLEF are left-wing leaders, who have always been strongly opposed to the Conservative legislation and the response of the union movement to it. During their periods as general secretary they have sought to retain their traditional union structures, and at the same time devolved decision-making power.

In the TGWU (Morris) and the EETPU (Jackson) the respective general secretaries introduced changes centralising power into the hands of senior officials. Such change substantially increased the authority of senior officials, reducing the influence of branches and lower-level committees, thus subverting democracy within the unions, and perpetuating oligarchic tendencies. The rhetoric and key phrases utilised by union leaders to convince sceptical union officials and members of the need for internal change focused the mind on the need for union restructuring, and stressed that the approach advocated by the executive was the only sensible and logical option in a fast-changing and hostile environment. It was claimed that the failure to change trade union practices and procedures threatened the future of these trade unions. For example:

> In order for this union to survive and alleviate its perilous financial predicament we need to change and modernise our internal procedures and practices which constrain decision-making and effective action. We must streamline our organisational structure and improve the methods by which the union communicates with its lay members. (Bill Morris, TGWU)

> We need to be able to change and adapt quickly to circumstances and events. Too often in trade unions senior officials can be hampered in taking the most appropriate action because of the requirement to consult various committees within the union structure. If we do not alter this position the union will not be at its most effective and will not be advancing to the full the interests of its members. (Ken Jackson EETPU)

In sum, the research findings demonstrate that, despite the legal reforms, the precise nature of trade union government that exists within the case-study unions after the Conservative legislation differs, since trade unions are not homogeneous (Hendy 1989). The case-study unions' reactions to the legislation were different, determined by their history, traditions and experiences and the challenges that they faced (chapters 4, 5, 6 and 7; Undy *et al.* 1996). Conservative legislation did not produce uniform change in trade union governance across union boundaries in a more moderate direction. As Undy *et al.* (1996: 262) stated: 'the Conservative legislation achieved little or nothing in terms of political reorientation and democratisation.' The intentions of Conservative policies have been defeated in this regard. The willingness of some trade union members to engage in industrial action and the election of left-wing general secretaries with an antipathy towards the Labour government can be regarded as evidence that the legislation introduced to procure trade union reform has failed transform the political complexion of trade unions.

The Conservative legislation has succeeded in making trade unions more democratic in their decision-making, by providing the opportunity for members to participate in the determination of key decisions. It also imposed on trade unions burdensome legal and administrative requirements, relating to the operation and functioning of trade unions, that were expensive, time-consuming and constituted nuisance value, in an attempt to divert trade union resources from engaging in traditional forms of union purpose and collective action.

However, the hostility embodied in the Conservative legislation has not been reflected in the behaviour of rank-and-file trade unionists in respect to election ballots, political fund ballots, industrial action ballots or the enforcement of the statutory rights of union members, the issues addressed by the Research Questions in this study. The legislation could not be said to have prevented the election of left-wing union leaders or to have led to the demise of political funds (Undy *et al.* 1996; Leopold 1997; Grant and Lockwood 1999). The industrial action balloting legislation did not prevent a high

proportion of such ballots being carried in favour of industrial action, although it could be linked to a decline in the incidence of strike activity (Martin *et al.* 1996; Elgar and Simpson 1996; Elgar 1997; Bradley and Leach 2003). In addition, it did not lead to large numbers of members seeking to challenge trade union decision-making by enforcing statutory rights via external agencies (Carby-Hall 1992; Morris 1993; Lockwood 2000).

Chapter 8 – Conclusions and Implications

8.1 Introduction

This chapter provides a theoretical analysis of the impact of Conservative legislation on trade union internal affairs and considers possible future developments. The chapter is divided into three sections. The first section states and discusses the research conclusions in light of the research findings documented in chapters 4, 5, 6 and 7. The second section examines the implications of the research findings for trade unions, union democracy and government policy. The final section outlines the contribution made by this thesis to the development of existing knowledge.

8.2 Conclusions

It is evident from chapter 1 that trade unions traditionally had the right to determine and enforce union rules through their own democratic procedures with a modest degree of external regulation emanating from the law (Pelling 1971: chapter 3; Barrow 2002: 23; Maguire 1999: 3; Phelps Brown 1986: 284). Trade unions adopted a 'collective participatory' approach to union government, with collective decision-making determining key issues, such as the appointment of senior officials, industrial action, discipline and expulsion, and union policy (Webb and Webb 1920: 3; Hirschman 1970: 171; Radice 1978: 166; Clegg 1979: 112; James 1984: 8; Flood 1988: 39 and Terry 1996: 39).

However, successive Conservative administrations condemned trade union government, on the grounds that it enabled militant activists to control union actions and policy (Democracy in Trade Unions 1983). Influenced by the writings of the New Right, they adopted an individualistic conception of union democracy, designed to strengthen the rights of individual trade union members, with the aim of making trade unions more moderate organisations (chapter 2).

In this respect, Maguire (1999: 7) has remarked:

> The Conservatives were introducing a specific kind of union government for the achievement of a specific aim: not the ennoblement of union members by giving them a stronger hand in shaping their own destiny within the union society, but the disestablishment of trade union strength in Britain.

The Conservative legislation changed trade union government and decision- making processes. With the exception of the BFAWU, all the case-study trade unions participating in this study changed their rules to comply with Conservative legislation (chapters 4, 5, 6 and 7). Such compliance led to the pragmatic adoption of the Conservative requirements (Gospel and Palmer 1993: 149). This placed the emphasis on membership involvement in balloting and the enforcement of individual rights as distinct from collective participation (chapters 1 and 2).

However, the unique case of the BFAWU is significant and worth reiterating. Chapters 4, 5 and 6 revealed that in a number of respects the union is not complying with the Conservative model of democracy. There are several reasons why the practices and procedures of the BFAWU have not to date been challenged by employers, the membership, or the CO. First, employers dealing with the BFAWU have been reluctant to resort to use of the law, close employer ties have been an important factor in the lack of challenge. The union is relatively self-contained and small, covering only the baking and frozen food industries. This has meant that over many years stable relationships have been developed with employers. Second, the membership of the BFAWU is clearly satisfied with the way the organisation functions. The widespread support amongst the membership for the BFAWU system of government is historical, and stems from the internal unrest that arose in the union during the 1960s and 1970s (chapter 4, pages 99-101). A final reason for the lack of challenge is that the CO will not investigate trade unions on his own initiative to establish whether a particular union is in compliance with the law. Enforcement of these laws is a complaint-driven process.

The compliance with the legislation by the majority of trade unions was driven by a variety of factors. First, a pragmatic recognition on behalf of the case-study unions that the legislation would not be repealed, and that it had be dealt with (Steele 1990: 64; Undy *et al.* 1996: 163). Second, the realisation that the legislative requirements could be accommodated within existing trade union procedures and practices (Undy *et al.* 1996: 163; Elgar 1997: 217; chapters 4, 5, 6, 7). Third, a belief that compliance with the law legitimised union activities and decision-making, and gave trade unions enhanced credibility with public opinion (Grant and Lockwood 1999: 90). Finally,

the threat of legal sanction, if the trade unions failed to comply with legal requirements made trade unions acutely aware that it was in their best interests to meet legal obligations, in respect of the conduct of trade union business (chapters 4, 5, 6, and 7). Therefore, the unions' responses can be seen as demonstrating realism and that they showed adaptation to a changed political and legal environment, although compliance was secured via the threat of injunctions, fines and sequestration (Undy *et al.* 1996: 25; Brown and Wadhwani 1990: 2, 31; chapter 5).

However, whereas trade unions have complied with the legislative provisions, it could be argued that the legislation failed to fulfil the expectations of the Conservative policy-makers. In simple terms, these expectations were to give a voice to the 'moderate majority' within trade unions, making trade union governance more responsive to the wishes of the membership. Secret ballots acted to provide credibility and legitimacy to trade union activities that the Conservatives clearly disliked. These were unintended and unpalatable consequences of the legal provisions from a Conservative perspective (4, 5, 6, and 7). An illustrative parallel that amplifies the way in which the law can sometimes produce unintended consequences can be drawn from the USA. The National Labor Relations Act 1935, also known as the Wagner Act sought to advance unionisation and collective bargaining. The objective of the legislation was summarised as follows:

> The Act was designed to democratise the American workplace to put an end to 'industrial tyranny', by giving unions legal recognition as well as state protection .... Collective bargaining is an essential attribute of a free society (Leon Keyserling, drafter of the Wagner Act 1945: 12).

The Act also created a new National Labour Relations Board to arbitrate deadlocked labour-management disputes, guarantee democratic union elections, and penalise unfair labour practices. In the event, the Act's intentions were frustrated and even reversed, primarily because of vigorous and sustained employer hostility and the largely non-interventionist and sometimes anti-union policies of the federal government (Beaumont and Towers 1992: 130). The lack of success in the majority of union representation elections in the USA has been attributed to employers adopting anti-union tactics, including the use of supervisors to convey employer opposition, one-to-one communication between managers and employees about the implications of union recognition, captive audience meetings, victimisation and

dismissal of activists, redundancies involving union members, and threats to relocate production or close the workplace (Wood and Moore 2004: 84; Vinel 2003: 53; Bronfenbrenner and Juravich 1998: 22-3; Yates 1994: 4; Beaumont and Towers 1992: 130-132; Freeman and Medoff 1984: chapter 15).

Granting individual trade union members the right to complain to employment tribunals, to the High Court (with the aid of CROTUM), or directly to the CO did not result in significant numbers of legal claims being made against trade unions. This is not surprising, given that the majority of members expressed the view that they were disinclined to complain about their trade union to external agencies (chapter 6). The legislation relied too heavily on the presumption that disaffected members would launch actions against trade unions (Lockwood 2000: 471).

Although all trade unions, except the BFAWU, have incorporated the individualistic elements of the Conservative legislation into trade union governance, they have in addition all retained collective participation in many areas of union organisation. Membership involvement in trade unions is now through a blend of individual and participative mechanisms. This is especially demonstrated by the holding of meetings and discussion prior to the holding of industrial action ballots, the campaigning by groups at elections and the collective effort in the retention of political fund campaigns. This shows that collectivism within trade unions is not dead (chapters 4, 5, and 6).

The Conservative legislation relating to trade union government had a complex impact on the democratic processes of trade unions, on their behaviour and on their activities and those of their officials and members. The technical nature of the balloting legislation increased the costs of trade unions and made union administration burdensome. In the case of industrial action ballots, the complicated nature of the legislation made it difficult to call industrial action lawfully (Brown and Wadhwani 1990: 62; Undy *et al.* 1996: 197; Elgar and Simpson 1993: 13; Elgar 1997: 131). It was also evident in chapter 5 that senior officials in the TGWU and EETPU used the requirements of the law to obtain a degree of control over the membership. Senior officials could discourage members from taking precipitous action that could

result in the trade union being in breach of the law. Overall, the evidence from the case-study unions was that the taking of unofficial action is now rare because of the potential legal ramifications. This confirms the findings of previous research (Brown and Wadhwani 1990: 62; Elgar and Simpson 1993: 12; Elgar 1997: 166; Brown *et al.* 1997: 16 and Cully *et al.* 2000: 245). Trade union members do not want to act in a way that would place the future of the union in jeopardy.

The Conservative legislation had a direct effect on the constitutions of unions in respect of elections, political fund ballots, industrial action and the rights of members. However, the legislation also had an indirect effect on the attitudes and expectation of members, in relation to internal trade union affairs in some trade unions. In ASLEF, the RMT and the EETPU there were debates about whether elections should be extended to other lower-level officers not covered by the legislation. ASLEF and the EETPU resisted such moves and retained the status quo (chapter 4).

In contrast, the RMT introduced a greater use of elections for lower-level officers, while the leadership of the CPSA were encouraged by the mass membership to have policies determined by ballot of the members rather than by activist decision-making at conference (chapter 4). It could thus be argued that the law had a positive impact on union democracy, by encouraging a debate about union government. It could also be argued that the creation of external 'watchdogs', such as CROTUM and the CO, to monitor the relationship between trade unions and their members enhanced union democracy, where it prompted them to review and improve their existing internal mechanisms for dealing with potential member complaints (chapter 6). Coupled with training union officials, careful drafting of the rule book could rid union procedures of many legal flaws.

The use by trade unions of workplace ballots increased democracy by improving turn-out. However, the requirement to use only postal balloting caused a significant decline in participation across the trade union movement, and hence of democracy. This confirms the findings of the Elgar (1997: 158) research into the impact of industrial action balloting legislation. The study reported that trade union negotiators conveyed dissatisfaction about the long-term effect of postal balloting on membership

participation in internal trade union affairs and policy formulation. They argued that postal balloting had resulted in growing absenteeism from branch meetings, with the consequence that fewer ordinary members now participate in the development of union policy. It also meant that union policy was not given the degree of critical attention and discussion that it deserved.

Chapters 4, 5 and 7 of the thesis have shown that postal balloting has acted to perpetuate one of the main features of union government that the Conservatives claimed they wanted to eradicate, the influence of trade union activists. In this respect, it is evident that the intervention of the law did not increase the participation of the assumed more moderate member in trade union affairs. This has been reflected by the election of left-wing union leaders, the high proportion of industrial action ballots being carried in favour of industrial action and the endorsement given to the creation or continuance of political funds by union members through political fund ballots.

An assessment of the impact of legal change is often problematic, since it can be difficult to know whether it is the law or other related changes that have produced an observed result. Conservative legislation was not the only influence on the internal affairs of trade unions, other factors acted alongside the law also shaping change. Changes in the nature of union government and behaviour were linked to a combination of non- legislative pressures (Lockwood 2004: 97). The influence of these other factors on internal union government was referred to at appropriate junctures in chapters 4, 5, 6 and 7. These factors included the economic environment, financial circumstances, the general industrial relations climate, employer tactics, the union leadership, membership attitudes, the political complexion of trade unions and industrial change (Dunn and Metcalf 1996: 67 Brown and Wadhwani 1990: 2, 31; Steele 1990: 56). These factors stimulated trade unions to reform their procedures and practices, and to use the strike weapon more sparingly (chapters 4 and 5). The more considered use of industrial action confirms the findings of Brown and Wadhwani (1990: 62) and also confirms the findings of the 1998 Workplace Employee Relations Survey (Cully *et al.* 2000: 125).

In some of the case-study unions, for example the TGWU and EETPU, the influence of the national leadership was particularly prominent in bringing about internal change. Members were persuaded that the greater centralisation was in the long-term health of the union. In these unions, the leadership stressed the importance of maintaining unity within the union and acting in accordance with the law (chapters 4, 5, 6 and 7).

The conclusions outlined above are now developed further by an examination of the study's implications in three key areas.

8.3 Implications of the Findings for Trade Unions, Trade Union Democracy and Government Policy

8.3.1 Implications for Trade Unions

In general, the legal framework imposed on trade unions by successive Conservative governments in the 1980s and 1990s is no longer a major issue of concern. Contemporary trade unions are less concerned about the law pertaining to internal union affairs and more concerned with issues of union growth and extending influence in the workplace. They are keen to build on their internal strengths and a more favourable economic and political climate to improve union density and influence. They hope that through the development of new union structures and strategies they will be able to take advantage of the statutory recognition procedure introduced by the Employment Relations Act 1999, the advent of European Works Councils, and improvements in information and consultation rights (Information and Consultation Directive 2002/14/EC; Gospel and Lockwood 1999: 233). The only areas in which the case-study trade union officials and members expressed a desire for some reformulation of the law were those concerning political fund ballots, the complex industrial action balloting procedures and the statutory restrictions relating to membership and discipline. These provisions were regarded as burdensome and an unreasonable intrusion into the affairs of trade unions. Further comment will be made on these issues in section 8.3.3.

The Conservative legislation of the 1980s and 1990s has had a number of intended and unintended consequences that have led to the case-study unions becoming better organised and more efficient. Overall, these unions have found the process of balloting to be one through which they can ascertain and respond to the views of the membership. Their leaders have also found that the ballots reinforce rather than challenge their control and authority. In these respects the Conservative legislative framework appears to have improved the relationship between trade unions and their members, and has helped validate and legitimise aspects of union leadership behaviour and governance (chapters 6 and 7).

One lesson that the case-study trade unions have learnt from their experiences of the 1980s and early 1990s is the need to be less insular institutions. Trade union leaders are more willing to change procedures, practices and behaviour in light of experience and in response to changing circumstances. On the whole trade unions have become more open and responsive organisations, because of the hostile environment which they have endured. Several broad examples from earlier chapters can be provided to illustrate this point. Firstly, the way trade unions accepted and adapted to the legislative requirements imposed upon them (chapters 4, 5, 6 and 7). Secondly, the changes trade unions made to practices and procedures in an attempt to improve both administrative efficiency and the quality of service they provided to the membership (chapters 4 and 7). Thirdly, the introduction by trade unions of improved disciplinary and grievance procedures applying to the membership, designed to promote fairness and order in the treatment of members (chapter 6 and 7). Finally, the acceptance by trade unions of the fact that public opinion about the propriety of union internal affairs matters, and the willingness to alter procedures, practices and behaviour accordingly (chapters 4, 5, 6 and 7).

8.3.2 Implications for the Nature of Trade Union Democracy

The implications of the research findings for trade union government are rather mixed. On the one hand, ballots can be regarded as a democratising measure, subjecting key decisions to the determination of the wider membership rather than being the preserve of unelected committees or reached through the process of indirect

elections. On the other hand, the low level of membership participation in postal ballots undermines this view (chapters 4, 5 and 7).

In Chapter 1 it was shown that the system of decision-making that unions traditionally emphasised was collective or participatory in nature. It was claimed that the diversity of democratic methods utilised within the decentralised structure of a trade union enabled the views of the membership to be communicated to the union hierarchy at a number of levels. All members had the right to influence decision-making by actively participating in union affairs at the workplace, by attending, speaking and voting at union branch meetings, and by involving themselves in policy determination as elected delegates to union committees. A significant problem for trade unions was that although unions adopted a particular form of democracy, this did not correspond with others understanding of the term. As a senior trade union official in ASLEF stated:

> Successive Conservative governments conveyed the message that trade union leaders did not want to give their members the right to make an informed choice about whether they wanted to go on strike, as to who their general secretary should be and as to who should sit on their NEC. It was asserted that traditional trade union democracy consisted of a handful of activists turning up at a meetings to determine how hundreds, sometimes thousands, of votes in a local branch should be cast at the union's conference. This portrayal of trade unions was damaging to the union movement.

The Conservatives successfully played on this view, convincing union members and the public that unions were not democratic institutions. This rendered the Conservative individualistic approach more persuasive than the unions' collective participatory model, which emphasised interaction and involvement (chapters 1 and 7). The Conservatives claimed that the only legitimate approach to union democracy was one where key decisions were taken by a ballot of the entire union membership likely to be affected by the outcome of the decision (chapters 1, 2 and 3).

Although the majority of case-study unions complied with the Conservative individualistic approach, this did not result in the creation of a uniform system of trade union government across the case-study unions. For example, ASLEF and the RMT are in line with James's (1984: 8) polyarchic approach to union government (chapter 1). Whilst the unions are structured in a hierarchical manner, power is distributed at different levels. The union encourages active participation within

different collectivities of the union. These include workplace organisations, branches, local committees, company councils, focus groups and the NEC. The system of government encourages collective debate and membership input on policy issues relating to union organisation, industrial action, collective bargaining and the relationship between the trade union and the membership (chapters 4, 5, 6, 7).

In contrast, the TGWU, EETPU and NATFHE have, in the areas of industrial action balloting and trade union member relations, introduced change, centralising the decision-making process and strengthening the control of senior officials (chapters 5 and 6). Traditional procedures and practices in these unions have been eroded on two fronts. First, by the Conservative individualisation of democracy and second, by the tendency of the leadership to channel decision-making to the centre. The actions of the leadership were motivated by a belief that centralised decision-making in this domain would ensure continuity of procedures and practices relating to industrial action, compliance with the law and safeguard the financial position of the union (chapter 5).

In the case of the CPSA, it was shown in chapter 4 that the union has moved away from collective participatory democracy to a system of direct democracy. Key decisions are now taken by a referendum of union members, while intermediate bodies have been bypassed. The executive has also gained greater discretion over the formulation and implementation of policy. Union activists from the left were sidelined as power was taken out of their hands.

In the case of the BFAWU, whilst the legislation has introduced relatively little change, the union has undergone considerable reform due to internal factors. This has included devolved participation and decision-making within the union.

Whilst trade unions believe that legislation has undermined participative forms of decision-making, they accept that the public perception of internal affairs has been improved, legitimating their activities. In this respect the majority of trade union representatives regarded the legal provisions as having a beneficial impact on union governance (chapters 4, 5, 6, 7).

8.3.3 Implications for Government Policy

With respect to future government policy towards trade unions, the research suggests that trade unions should not be assumed to be unchanging, passive and fossilised institutions. As McCarthy (1990: 55) remarked:

> Trade Unions are not dinosaurs stuck in their ways unable to change nor, indeed are union rules laid down in tablets of stone.

On the contrary, trade unions emerge as institutions, which have had to adapt to a variety of external pressures of change and as being capable of doing so (Lockwood 2004: 97). The findings also provide important lessons for government relating to the legal regulation of trade unions in terms of the role and the use of the law. The Conservative approach was based on generalisations about how trade unions operated and how the trade union movement was likely to respond to the legislative provisions. The Conservatives erroneously assumed that individual union members would vote against the policies of leaders, unless they introduced more moderate policies (chapters 2 and 3). Contrary to Conservative expectations, the thesis finds that the legislation did not result in a weakening of unions or a dilution of their activist platforms. In fact, the mandatory voting strengthened the union activist process by giving it greater legitimacy (chapters 4, 5, and 7). The implication is that unions can use such democratic processes to gain greater legitimacy and thereby broaden their appeal to more workers (Verma and Kochan 2004: 7).

Future governments should be aware that, although the law can be used to make prescriptive changes to union decision-making procedures, this does not necessarily translate into changes in member-voting behaviour or in changes to the political complexion of union leaderships. Although the law can safeguard members' existing democratic rights, grant additional rights and encourage the exercise of such rights, it cannot force members to participate in union decisions; the determinants of membership participation are highly complex (Spinirad 1960: 237; Perline and Lorenz 1970: 425; Klandermans 1986: 189). Furthermore, the changes that took place were not always the ones that Government expected, and the aims of Conservatives were sometimes frustrated (chapters 4, 5, 6 and 7). It might, therefore, be concluded that governments, often unduly influenced by legal arguments, can place too much store on legislation in seeking change. The thesis has revealed and demonstrated the

general limitations of the law in promoting change where there is strong resistance and in the context of institutions, such as British trade unions, which are normally pragmatic and realistic in their responses.

It is at least arguable that government policy, even without actual legislation, can be very significant in its impact by encouraging good practice and offering support for voluntary arrangements. For example, the coverage of collective bargaining grew slowly after 1945, to accelerate in the 1960s and 1970s, partly because all governments supported it by their rhetoric as well as their example in their public sector industrial relations policies. Additionally, through its statutory and other agencies, notably ACAS, it promoted collective bargaining. This was in fact a statutory duty of ACAS for more than ten years after the agency was founded. Furthermore, the restrictive trade union laws introduced by successive Conservative governments and adopted by Labour governments since 1997 require being activated, normally by employers or union members. To date British employers and union members have remained reluctant to do so, retaining some of their old instincts for voluntarism and non-recourse to the law.

Trade unions are not calling for wholesale reform of the law pertaining to the internal regulation of trade union affairs. However, there are several areas in which the trade union movement would like to see some reformulation of the law.

First, the law pertaining to political fund ballots could be re-evaluated, modified and improved to make the legislation concerning union political funds fairer and less restrictive. The political fund legislation appears to have been based on the underlying hypothesis that trade union members might not wish to see their union engage in political activities or might not wish their unions to be financially linked to the Labour Party (Blackwell and Terry 1987: 623-42; Grant 1987: 73-79; Leopold 1986: 287-303; Steele *et al.* 1986: 443-67)). Thus, members needed an opportunity to express these views, and political fund ballots appeared to offer the best way of achieving this (chapter 4).

The results of the political fund ballots in both 1985-8 and 1993-8 seem to contradict these hypotheses. On both occasions the overwhelming majority of unions retained their funds. This indicates that union members were happy for their unions to engage in political activities and that, irrespective of their personal political beliefs, they were not unduly concerned by their unions' use of political funds to support the Labour Party. Given these results, it is questionable as to whether all unions need to have review ballots every ten years. They could be seen as an unnecessary diversion and a disproportionately regulatory mechanism, compared to that which is presently required of other institutions which make political donations (Grant and Lockwood 1999: 92).

While the current legal requirement to hold a political fund ballot every ten years may seem excessive, the complete scrapping of political fund ballots would be a retrograde step and might lead to union members and the general public losing confidence in the propriety of union political activities. Indeed, some unions would oppose such action, believing that political fund ballots now play an important role in legitimising their political activities (Grant and Lockwood 1999: 90; chapter 4). The law could, however, be reformulated to make the ballots less burdensome for trade unions.

Rather than requiring trade unions to hold a review ballot every ten years, the law could be amended so that after an initial ballot the union would be required to hold a review ballot only where the number of members 'contracting out' reaches a specified figure. The figure could be in line with the average percentage of members 'contracting-out' of paying the political levy at unions with political funds. At present, this figure is approximately 20 per cent (Grant and Lockwood 1999: 92). The current Labour government steadfastly refuse to amend the law in this domain, believing that the existing requirement to hold review ballots should be retained (DTI 2003: 67). They have, however, promised to keep under review the possibility of reintroducing state funding of political fund ballots, and other statutory and non-statutory ballots, as was available in the 1980s and early 1990s under the Trade Union Ballot Scheme. The Labour government have also expressed an intention to create a power for the Secretary of State to extend by order the balloting methods used in statutory union ballots and elections (DTI 2003: 68).

A second area of potential reform concerns the statutory rights pertaining to membership and discipline. Here, it is contended that the UK is not acting in accordance with its European and international obligations (Novitz 1998; Ewing 2003). Chapter 1 explained the common-law position: that trade unions could not be forced to associate with other individuals (Cheall v Apex.1983 IRLR 215). The introduction by the then Conservative government of legislation to enforce the right of every person to join a trade union of their choice, and the right not to be expelled from a trade union unless the exclusion or expulsion is expressly permitted by statute, changed this position. However, it is now arguable that in maintaining this position the UK is breaching European Human Rights law. In Cheall v UK 1986 8 EHRR 74, the European Commission of Human Rights (now defunct) confirmed the House of Lords decision in Cheall v Apex 1983 (ibid).

The legislation ignores the trade unions' internal democratic processes, where the dissident member is being disciplined for refusing to accept the collective decision of the majority resulting from a secret ballot to take industrial action for the benefit of the membership collectively. To permit non-association to this extent undermines the fundamental right of association of the trade union membership and the ability of the association to protect their interests, as outlined in Art. 11(1) (Barrow 2002: 109). Further, in respect to the right not to be unjustifiably disciplined, it has been held that this is incompatible with Article 3 of the ILO convention No 87 on Freedom of Association and Protection of the Right to Organise 1948, (Brown and McColgan 1992: 265-279). The Social Rights Committee of the Council of Europe has considered the restrictions placed on trade unions in respect to exclusion, expulsion and unjustifiable discipline and stated:

> The Committee is concerned about these provisions as they represent a substantial inroad into the freedom of trade unions to manage their own affairs. The situation is not in conformity with the European Social Charter.
> (Social Rights Committee, Conclusions 1998: 4)

The Trades Union Congress has proposed that the law be changed so that unions should be free to decide their own admission and disciplinary rules. This should be subject only to general laws such as those against impermissible discrimination (TUC 2003: 16).

Despite the criticisms of the current law pertaining to membership and discipline, the Labour government has reaffirmed its commitment to retain the pre-1997 law (DTI 2003: 68).

Finally, reform of the regulatory framework overseen by the CO is also appropriate. This is because the CO has suggested that most complaints received from members could be dealt with in-house by the parties concerned, with the operation of better grievance procedures (Lockwood 2000: 480). By far the most common complaint the CO receives from trade union members is one the CO cannot (and should not be able to) deal with. This is that the union has not provided the member with the standard of service they expected. Some unions already have a formal complaints procedure for dealing with such issues; others might consider introducing one, perhaps with an independent element. Another contentious issue that trade unions might wish to consider is the question of greater transparency in the expense regime operated for national officials and officers (CO Annual Report 2000-2001: 1).

The introduction of improved internal disciplinary procedures may also help to solve some of the tension that exists about a specific aspect of the current jurisdiction of the CO. There is evidently a strong case for saying that individual members should have the right to a cheap and informal way of resolving disputes with their union over whether ballots or disciplinary proceedings are carried out according to the union's rules. Ballots and discipline, incidentally, are both areas where the courts have been wary of applying the principle in Foss v Harbottle, namely that an individual member cannot take an action where an alleged wrong is done to the union by an officer of the union (CO Annual Report 2000-2001: 5; chapter 1). However, the strength of the case for the right to such a dispute-resolution process in relation to the constitution or proceedings of committees or decision-making is less convincing. This is evidenced by the comments of the CO:

> Usually cases under this clause reflect differences over policy which the union is, or should be capable of resolving for itself (CO Annual Report 2000-2001: 5).

In the light of all the above, the Labour government might encourage the trade union movement to set up a voluntary system of arbitration or an ombudsman. A voluntary scheme would not constitute a completely fresh approach to the regulation of the

relationship between trade unions and their members. A limited scheme of self-regulation existed to deal with admissions and expulsions for several years from 1976 (Elias and Ewing 1987: 245). It has been remarked that this might constitute a more appropriate method of resolving differences between trade unions and their members than the highly adversarial means that is currently offered by the legal process (Deakin and Morris 1998: 215). The trade union movement could also have a lot to gain from setting up an ombudsman service, both in terms of credibility and as a means of obtaining some degree of independence from state interference in their internal affairs. It would also reduce the number of minor complaints to the CO. The only reform of this area of the law proposed by the current Labour government is to give the CO the power to strike out applications or complaints on the grounds that they are scandalous, misconceived or vexatious (Employment Relations Bill 2003: 30).

The interaction between the Trade Union Coordinating Committee (TUCC) and the Certification Officer (CO) relating to the drawing up of 'model rules' for the conduct of political fund ballots (detailed in chapter 4) is evidence of the survival of old-style voluntarism. Through the process of negotiation the CO and TUCC reached an agreement on 'model rules', which satisfied the TUCC that trade union members' would not be dissuaded from voting and was acceptable to the CO because it ensured good practice in the administration of union affairs. In this situation a dispute relating to the administration of union business was resolved on a voluntary basis rather than resorting to the law.

8.4 Overall Contribution of the Thesis

The thesis makes six significant contributions to the study and understanding of the impact of Conservative legislation on trade unions.

First, the thesis has identified the impact of the Conservative individualistic approach towards trade union governance on the traditional 'collective participatory' approach of trade union government (Webb and Webb 1920: 3; Hirschman 1970: 171; Radice 1978: 166; Clegg 1979: 112; James 1984: 8; Flood 1988: 39 and Terry 1996: 39).

Whilst all trade unions except the BFAWU have incorporated the individualistic elements of the Conservative legislation into trade union governance, they have also retained some degree of collective participation in many areas of union organisation (chapters 4, 5, 6 and 7). The case-study unions have adopted an alternative form of 'collective participatory' democracy, not the Conservative individualistic approach.

This 'hybrid' form of union governance that the trade unions have created for themselves reflects traditional collective participation, as well as much (if not all) of the Conservative approach. As far as collective participation is concerned, a wide variety of membership involvement is possible in trade union affairs through workplace organisation, branches, local committees, pre-industrial action ballot meetings, group activity, specialist forums/debates and the annual conference. Trade union decision-making and policy development is by a process of consultation and debate with the membership, or their nominated or elected delegates, that takes place within different collectivities at different levels of trade union structure. Decision-making is exercised by the membership as a whole rather than as individuals.

The individual approach is confined to meeting the strict legal requirements of the Conservative legislation. In particular, whilst trade unions hold ballots to determine key issues in the areas of elections, political funds and industrial action, the trade union attempts to influence membership opinion and hence the outcome of the ballot by the various collective mechanisms of union organisation. In that context, the collective voice of the trade union and the degree of vigour with which rank-and-file members were pursued by local officials to vote in the way advocated by the union played a decisive role in determining the outcome of ballots (see chapters 4, 5 and 6). Balloting was a device around which collective decision-making and collective activity could develop. With regard to industrial action balloting, the union leadership and shop stewards stressed the importance that collective organisation could play in defending the individual rights of individual members at the workplace, and in the achievement of better terms and conditions of employment.

The adoption by trade unions of the individualistic elements of the Conservative approach has not produced the results that the Conservatives hoped it would do, in

terms of union and member behaviours and actions (Undy *et al.* 1996: 163; Elgar 1997: 217; Lockwood 2004: 130-131). The Conservatives had sought a reorientation of trade union government in a moderate direction (chapter 2). The legal regime has not, to date, resulted in the disestablishment of collective decision-making in trade unions in Britain (chapters 4, 5 and 7). Trade unions accommodated the legal requirements and worked within them. Whilst the extant literature has considered the impact of Conservative legislation on trade union strength and behaviour, it has inadequately identified this new 'hybrid' form of union government and, in particular, failed to stress the continued importance of forms of collective participation in trade unions.

Second, this thesis has added to and informed the existing literature relating to union election ballots, industrial action ballots and political fund ballots (chapters 4, 5, 6, and 7). It has updated the literature on the use of secret ballots (Steele 1987: 52; Fredman 1992: 34); Kessler and Bayliss 1995: 191; and Undy *et al.* 1996: 25) showing that ballots have become widely accepted by trade unions as key elements, both in carrying out consultation with members and in developing union policies (chapter 6 and 7). The research has also confirmed the work of Undy *et al.* (1996: 260) who argue that elections have bolstered the authority of elected leaders. It has also confirmed the findings of Smith *et al.* (1993: 380) that the legislation has not initiated 'a reorientation of union policy in a moderate direction' (chapter 6). However, the research has also added to and clarified the findings of Undy *et al.* (1995: 193) in one crucial respect, pertaining to union governance. It has revealed that groups and activists who were divested of the power to appoint senior officials retained influence by gaining membership of key union committees, campaigning and generally participating in the collective activities of the union, in respect of elections, industrial action and a range of political activities. The results of a variety of secret postal ballots and the low turn-out figures indicate that the activist member who religiously casts their vote determines the political character of the union. Ballots have not encouraged the more apathetic member to participate (chapter 4 and 5). Indeed, postal ballots have decreased the likelihood of their participating (chapter 7).

The research has confirmed and added to the literature concerning the impact of industrial action ballots. It has shown that, on the one hand, ballots could be used to the advantage of trade unions, but that, on the other, the technical balloting rules made calling industrial action a burdensome administrative task. The Green Paper Democracy in Trade Unions (1983) suggested that the gradual introduction of increasingly complex statutory regulations pertaining to the organisation of industrial action ballots would reduce the number of occasions they were organised by trade unions (Undy *et al.* 1996: 219). However, an examination of the overall level of industrial action balloting activity during the period 1985-2003 does not support this contention.

Table 8.1: Industrial Action Ballots in Relation to the Number of Strikes 1985-2003

Year	Number of Ballots	Number of Strikes
1985	94	813
1986	246	1164
1987	280	1016
1988	331	781
1989	359	701
1990	340	630
1991	300	369
1992	269	253
1993	330	211
1994	1783	205
1995	494	235
1996	819	244
1997	702	216
1998	464	166
1999	983	205
2000	1083	212
2001	1926	194
2002	1175	146
2003	Figures not available	133

Table compiled from figures supplied by ACAS, the Office of National Statistics, the Trades Union Congress and the Electoral Reform Society.

Table 8.1 indicates that following the introduction of the requirement to hold workplace ballots in the TUA 1984, there was a gradual rise in the number of ballots held by trade unions, with a levelling out in the number of ballots in the early 1990s. However, in 1993 there was an increase in the number of ballots held following the imposition of postal balloting. Balloting increased as trade unions attempted to ensure that they carried out their activities in compliance with the complex and technical requirements laid down by the Trade Union Reform and Employment Rights Act 1993. The demanding statutory requirements served as a basis for legal challenges by employers.

During the years 1993-8 the number of recorded ballots fluctuated but remained higher than for the period 1985-93. The number of recorded ballots peaked at an all time high in 2001 when there were 1,926 ballots. 250 (13%) were for full strike action, whereas 1,213 (63%) were for action short of a strike, e.g. overtime bans. Although there were more ballots held in 2001 compared to the previous year, one teaching union, National Union of Teachers, organised most of these, of which 1,236 were held over one issue alone.

Table 8.1 also reveals an alteration in the proportion of disputes preceded by a ballot. During the period 1985-91 the number of recorded ballots fell well short of the number of recorded strikes, this position altered from 1992 onwards with an increasing number of disputes being preceded by a ballot. It has been suggested that this changing ratio reflects both the decline in overall strike activity in the early 1990s and the steps taken by senior trade union officers to ensure that union members remained within the law (Elgar and Simpson 1993: 13 Undy *et al.* 1996: 220).

Table 8.1 also demonstrates the considerable decline in strike activity during the period 1990-2003. The lowest total on record was in 2003 when there were 133 stoppages of work because of labour disputes.

The research evidence to date would indicate that balloting per se does not act as a deterrent against industrial action. The decline in strike activity reflects broader legislative, political, social, and economic changes together with employer policies,

which made trade unions more cautious about calling industrial action (Dunn and Metcalf 1996: 93; Brown, Deakin and Ryan 1997: 16).

Industrial action ballots led to the centralisation of union government in some trade unions (Kessler and Bayliss 1995: 191; Fredman 1992: 34; Undy *et al.*197-232; Brown and Wadhwani 1990: 62; chapters 5 and 8).

However, the research findings in respect of the RMT and ASLEF cast considerable doubt on the proposition put forward by Undy *et al.* (1991: 205) that the balloting provisions, by their nature, automatically centralised decision-making. Rather, they appear to confirm the research of Elgar and Simpson (1993: 131) that this varied from one trade union to another; trade unions not being homogeneous. It is also evident from the research that the threat of sequestration of unions' assets has resulted in a decline in unofficial action. This finding is consistent with that of earlier studies (Brown and Wadhwani 1990: 62; and Dunn and Metcalf 1996: 84; chapters 5 and 7).

The research findings in respect of the retention of trade union political funds demonstrated the strategic importance of the TUCC. Three benefits in particular merit attention.

First, the running of one centralised campaign reduced the costs by avoiding unnecessary duplication and enabled the pooling of resources. Smaller less affluent unions, who did not have the resources to mount large-scale campaigns, were major beneficiaries of this arrangement. Hence, the official from one such union emphasised that:

> For my union the cost of developing and producing material of the quality and professionalism that was available for this campaign was prohibitive. The TUCC material gave us exactly what we needed but at a minimal cost (national official ASLEF).

The second benefit of the TUCC co-ordinated campaign was that it enabled the trade union movement to timetable the ballots so that those unions expected to secure the largest majorities in favour of retention could ballot earliest. This left unions with potentially smaller majorities or with particular logistical problems when holding a ballot, a longer period of time in which to prepare their campaigns and work for the retention of their political funds. One of the nine officials, who highlighted this point

described the sequencing of ballots as being subject to a process of "orchestration" by the TUCC.

A final benefit of the TUCC co-ordinated campaign - one that was recognised by all of those interviewed - was the benefit of having campaign literature, which while customised to fit the individual union's needs, bore the same basic message and incorporated similar material and layout. A number of overarching themes were pursued, with the TUCC literature seeking to address questions such as: "Why does the union need a political fund?", "What's the political fund ballot all about?", "Will it cost me any more, if I vote yes?" and "How do I vote?". The campaign slogan was "Say YES to a voice" and formed the basis of all unions' campaign materials. Common typography and colour was used in conjunction with a variety of specially commissioned cartoon characters. Each character represented different sections of a union's membership based on occupation, gender and race, and each had a bubble caption which could relate, either to the overarching themes of the TUCC campaign, or to specific issues of concern of a particular union or sections of a particular union's membership. The TUCC also provided a detailed campaign guide for senior union officials charged with responsibility for their particular union's retention campaign (TUCC, 1993). Similarly, it provided a "pocket guide" to the campaign for full-time local and lay officials, which each union could customise to suit their own needs. Thus, the TUCC campaign enabled trade unions to project a coherent message to their members. This was especially useful in multi-union work places.

Third, a most important contribution made in the thesis is that it has provided original insight into the impact of the extensive package of statutory rights handed to members in an attempt to regulate and control trade union internal affairs. None of the previous studies have presented data on this strand of the Conservative individualistic approach. In this respect, the thesis provides a comprehensive analytical insight into the attempt of successive Conservative governments to reform the constitutional processes of trade unions by legal prescription. One aspect of the union response to the Conservative legislation that has been particularly notable in the research is the way the unions have attempted to adapt and use positively the legislation imposed upon them since the late 1980s. For example, whilst trade unions have not approved

of the statutory rights of members, they have attempted to comply with them. They have also attempted to use them to develop better relations between the union and the membership (chapter 6).

Fourth, the legal framework pertaining to ballots and the legal rights of members has given trade union activities and procedures added legitimacy and propriety. It was noted in chapters 4, 5 and 7 that there was a change in attitude towards election ballots, political fund ballots, industrial action ballots and membership rights. Provisions previously dismissed as unacceptable to the trade union movement were accepted pragmatically. This change in attitude led to the union movement using the legislative provisions on balloting and the individual rights of union members in order to legitimise their activities (chapters 6, 7 and 8 respectively). Whilst unions and members would not necessarily choose to run their internal affairs precisely in accordance with the rules prescribed by law (as it has made trade union administration a more complicated and onerous task), they do not advocate its complete abolition. It is believed that the legal framework has given members and the public confidence in the running of trade unions (chapters 4, 5, 6 and 7; Grant and Lockwood 1999). In this context, trade unionists do not deny that the law has a role to play in laying down a framework pertaining to the operation of trade union internal affairs. The point at issue is that the current legislation is regarded by trade unionists as excessive, both in terms of its technicality and in its scope, hampering the operation of trade union business and restricting the ability of a trade union to further the collective interests of its membership (chapters 4, 5, 6, and 7).

Fifth, the role of the CO in overseeing trade union activities shows that trade union affairs are on the whole operated properly and appropriately. Where maladministration of union affairs does occur, this is generally due to a careless error rather than to wilful behaviour on the part of the union and its officers.

Sixth, the Conservative legislation governing the internal affairs of trade unions will remain intact for the foreseeable future. The current Labour government has reaffirmed its commitment to retain the essential features of the trade union reforms of the 1980s, rejecting suggestions that the law regulating trade unions should be

completely liberalised to allow unions to regulate their own internal affairs (DTI 2003: 68). The Government considers that the relationship between unions and their members should be the subject of some regulation to provide necessary protections and proper standards of accountability. On this point the Labour government has remarked:

> Unions are extremely important organisations that regulate, or strongly influence, the employment relationship between many millions of people and their employers. That sets them apart from other voluntary organisations (DTI 2003, para6.17: 68).

The Government believes that, by and large, unions have adapted to the pre-1997 law and that it does not generally require amendment (DTI 2003: 68). Whilst the Labour government, predictably, is kinder towards trade unions than previous Conservative administrations have been, its commitment to retaining the pre-1997 law pertaining to the internal affairs of trade unions constitutes a disappointment for several trade unions, including the BFAWU, RMT and ASLEF (chapters 4, 5, 6 and 7; DTI 2003: 68).

The research constitutes the first real attempt to focus on all the Conservative legislation pertaining to internal union government together, and to analyse its impact on the internal affairs of trade unions. In doing so, the thesis has contributed to our knowledge of the impact of the legislation on trade unions.

Overall, the thesis has demonstrated that the Conservative legislation did not have the sort of impact on trade unions that had been presumed at the time of its introduction. The legislation produced some unexpected outcomes. First, in respect to union elections the legislation did not result in trade union members predominantly voting in favour of the 'moderate' candidate. The election of candidates from both the left and right of the trade union movement has occurred. Second, in respect of political fund ballots the Conservative legislation failed completely. It resulted in the retention of existing trade union political funds (the only exception being the case of the CPSA) and also led to some trade unions establishing political funds for the first time. Third, in respect to industrial action ballots, the legislation provided trade unions with a useful weapon that they have deployed instrumentally as part of their bargaining strategy. Finally, the Conservative legislation granting individual members the right to complain about the internal affairs of trade unions had a limited degree of success.

In particular, the creation of the Commissioner for the Rights of Trade Union Members proved to be a waste of public funds. The Conservative legislation failed to fulfil the intentions of Conservative law-makers in terms of 'outcomes', by engineering more moderate decision-making by members.

Finally, the findings of this research are neatly encapsulated in the following quote made by a national official of the TGWU who observed:

> The Conservative legislation was originally feared by trade unions and portrayed by the media as a disaster for the trade union movement. As things have turned out, the Conservative legislation actually legitimised union procedures, practices and behaviour and contributed to making trade unions more efficient and, dare I say, democratic. Trade unions proved themselves to be reliant and adaptable in the face of a wide raft of legislative reforms which laid down strict templates for union decision-making processes.

References

Sources

In order to compose this thesis the following information sources were used:

The TUC Library, University of North London

Warwick University Industrial Relations Records Library

Employment Tribunal Records, Bury St Edmonds

Institute of Advanced Legal Studies, London

The London School of Economics and Political Science

Interviews

Bibliography

Abbot, A. (1992) 'What do cases do? Some notes on activity in sociological analysis', in C. Ragin and H. Becker (eds), What is a Case? Exploring the Foundations of Social Inquiry (pp. 53-82), New York, Cambridge University Press.

Addison, J. T., and Siebert W. S. (1998) 'Union Security in Britain', Journal of Labour Research, 19 (3) Summer, 495-517.

Allen, V. L. (1954) Power in Trade Unions, London, Longmans.

Allen, V. L. (1981) The Militancy of British Trade Unions, London, Pluto.

Anderson, J. C. (1978) 'A Comparative Analysis of Local Union Democracy', Industrial Relations Journal, 18, 18-31.

Atkinson, P., and Hammersley, M. (1998) 'Ethnography and participant observation', in N. K. Denzin and Y. Lincoln, (eds) Strategies of qualitative inquiry (pp. 110-136), Thousand Oaks, California, Sage Publications, Inc.

Auerbach, S. (1990) Legislating for Conflict, Oxford, Clarendon Press.

Auerbach, S. (1993) 'Mrs Thatcher's Labour Laws: Slouching Towards Utopia?' Political Quarterly, 64, 24.

Bagwell, P. (1963) The Railwaymen, London, George Allen and Unwin.

Bailey, K. D. (1994) 'Typologies and Taxonomies: An Introduction to Classification Techniques, Quantitative Applications in the Social Sciences, vol. 102, Thousand Oaks, California, Sage Publications.

Bakers Food and Allied Workers Union, Food Worker, 1954, BFAWU.

Bakers Food and Allied Workers Union, Food Worker 1979, BFAWU.

Bakers Food and Allied Workers Union, Food Worker 1985, BFAWU.

Bakers Food and Allied Workers Union, Food Worker 1984, BFAWU.

Bain, G. S., and Elsheikh, L. (1976) Union Growth and the Business Cycle, Oxford, Basil Blackwell.

Banks, J. A. (1977) Trade Unionism, London, Collier-Macmillan.

Barrow, C. (2002) Industrial Relations Law, London, Cavendish.

Batstone, E., Boraston, I., and Frankel, S. (1977) Shop Stewards in Action: The Organisation of Workplace Conflict and Accommodation, Oxford, Blackwell.

Becker, H. (1940) 'Constructive typology in the social sciences'. In H. E. Barnes, H. Becker and F. B. Becker (eds.), Contemporary Social Theory (pp. 137-79), New York, Appleton Century.

Berger, M., Abel T., and Page C. (1954) Freedom and Control in a Modern Society, New York, Van Nostrand.

Bernard, H.R. (2000) Social Science Research Methods. Qualitative and Quantitative Approaches, Thousand Oaks, California, Sage Publications.

Blackwell, R. (1990) 'Parties and Factions in Trade Unions', Employee Relations, 12 (1), 23-31.

Blackwell, R., and Terry, M. (1987) 'Analysing the Political Funds Ballots: A Remarkable Victory or the Triumph of the Status Quo?', Political Studies, 35, 623-42.

Blustein, D., Phillips, K., and Davies, S. (1997) 'A Theory Building Investigation of the School to Work Transition', Counselling Psychologist, 25, 364-402.

Bowers, J. (2000) Bowers on Employment Law, 5th (ed) London, Blackstone Press.

Boyatzis, R. E. (1998) Transforming Qualititative Information: Thematic Analysis and Code Development, Thousand Oaks, California, Sage Publications, Inc.

Blyton, P. R., Nicholson, N., Ursell, G. (1981) 'Job Status and White Collar Members' Union Activity', Journal of Occupational Psychology, 54, 33-45.

Bradley, D., and Leach, D. (2003) The Eleventh Annual Industrial Relations Survey, DLA, London.

Brown, D., and McGolgan, A. (1992) 'UK Employment Law and the International Labour Organisation. The Spirit of Cooperation', Industrial Law Journal, 21, 265-279.

Brown, P. B. (1986) The Origins of Trade Union Power, Oxford, Oxford University Press.

Brown, W., and Wadhwani, S. (1990) 'The Economic Effects of Industrial Relations Legislation Since 1979', National Institute Economic Review (Feb), 57-69.

Brown, W., Deakin, S., and Ryan, P. (1997) 'The Effects of British Industrial Relations Legislation', National Institute Economic Review 161, 69-83.

Bryman, A. (1988) 'Quantity and Quality in Social Research', Contemporary Social Research, vol. 18, London, Routledge.

Bynner, J. and Stribley, K. M. (1979) Social Research: Principles and Procedures, Milton Keynes, Open University Press.

Carby-Hall, J.R. (1992) 'The Commissioner for the Rights of Trade Union Members: An evaluation of her work and achievements', Managerial Law Journal, (34), 1-57.

Carty, H. (1991) 'The Employment Act 1990 Still Fighting the Industrial Cold War', Industrial Law Journal, 20.

CCO (1979) The Conservative Manifesto, London, Conservative Central Office.

CCO (1983) The Conservative Manifesto, London, Conservative Central Office.

CCO (1987) The Next Moves Forward. The Conservative Manifesto, London, Conservative Central Office.

Certification Officer (1999) Annual Report 1998, London, The Certification Office.

Certification Officer (2000) Annual Report 1999, London, The Certification Office.

Clegg, H. (1979) The Changing System of Industrial Relations in Great Britain, Oxford, Blackwell.

Clegg, H., and Flanders, A. (1975) The System of Industrial Relations in Great Britain, Oxford, Blackwell.

Clement, B. (2003) 'Man accused of sex harassment is voted railway union chief', Independent, 18th July.

Coates, K., and Topham, T. (1980) Trade Unions in Britain, Nottingham, Spokesman.

Coates, K., and Topham, T. (1988) Trade Unions in Britain, London, Penguin.

Coates, D. (1989) The Crisis of Labour, Oxford, Philip Alan.

Cockburn, C. (1984) In the Way of Women, London, Macmillan.

Coffey, A., and Atkinson, P. (1996) Making Sense of Qualitative Data: Complementary Research Strategies. Thousand Oaks, California, Sage Publications Inc.

Coffey, A. B., Holbrook, B., and Atkinson, P. (1996) 'Qualitative Data Analysis: Technologies and Representations', Sociological Research Online, vol.1, 1-16.

Coleman, J., R. (1955) 'The Compulsive Pressures of Union Democracy', American Journal of Sociology, 61, 519-26.

Conservative Party (1968) Fair Deal at Work: The Conservative Approach to Modern Industrial Relations, London, Conservative Political Centre.

CPS (1980) Liberties and Liabilities: The Case for Trade Union Reform, Trade Union Reform Committee, London, Centre for Policy Studies.

CPS (1983) The Right to Strike in a Free Society, Trade Union Reform Committee, London, Centre for Policy Studies.

Crewe, I., Fox, A., and Day, N. (1995) The British Electorate 1963-1992, Cambridge, Cambridge University Press.

Crouch, C. (1977) Class Conflict and the Industrial Relations Crisis, London, Heinemann.

Crouch, C. (1982) Trade Unions: The Logic of Collective Action, London, Fontana.

Daly, J. (1984) Ballot Riggers Charter, Aims of Industry, London.

Darlington, R. (2001) 'Union militancy and left-wing leadership on London Underground', Industrial Relations Journal, 32 (1), 2-21.

Daniel, W. W., and Millward, N., Workplace Industrial Relations in Britain, London, Heinemann.

Davies, P., and Freedland, M., (eds) (1983) Kahn-Freund's Labour and the Law, London, Stevens.

Davies, P., and Freedland, M. (1993) Labour Legislation and Public Policy, Oxford Clarendon Press.

Deakin, S., and Morris, G. (1998) Labour Law, London, Butterworths.

Deakin, S. (1992) Inflation, Employment, Wage Bargaining and the Law, London, Institute of Employment Rights.

Dean, L. R. (1954) 'Union Activity and Dual Loyalty', Industrial Relations and Labour Relations Review, 16(2), 126-132.

DE (1981) Trade Union Immunities, Green Paper, Cmnd. 8128, London, HMSO.

DE (1983) Democracy in Trade Unions, Green Paper, Cmnd. 8778, London, HMSO.

DE (1987) Trade Unions and their Members, Green Paper, Cmnd. 95, London HMSO.

DE (1988) Employment for the 1990s, White Paper, Cmnd. 540, London, HMSO.

DE (1989a) Removing Barriers to Employment, Green Paper, Cmnd 655, London HMSO.

DE (1989b) Unofficial Action and the Law, Green Paper, Cmnd. 821, London, HMSO.

DE (1991) Industrial Relations in the 1990s, Green Paper, Cmnd. 8778, London, HMSO.

DE (1994) Competitiveness. Helping Business to Win, Cmnd. 2563, London, HMSO.

Denzin, N. K. (1970) The Research Act in Sociology, London, Butterworth.

Denzin, N. K (1989) The Research Act: A Theoretical Introduction to Sociological Methods, Englewood Cliffs, NJ, Prentice Hall.

Denzin, N .K., and Lincoln, Y. S. (1998) Collecting and Interpreting Qualitative Materials, Thousand Oaks, California, Sage Publications, Inc.

Dickens, L., and Hall, M. (1995) 'The State: Labour Law and Industrial Relations', in Edwards, P. (ed), Industrial Relations Theory and Practice in Britain, Oxford, Blackwell.

Donovan Commission (1968) Royal Commission on Trade Unions and Employers Associations 1965-1968 Report, Cmnd. 3888, London, HMSO.

Dorfman, G. (1983) British Trade Unionism against the TUC, London, Macmillan.

Duddington, J. (2003) Employment Law, London, Longman.

Dunn, S., and Metcalf, D. (1993) Labour Legislation 1980-1993, 'Intent, Ideology and Impact', Working Paper No. 12, Centre for Economic Performance, London School of Economics, University of London.

Dunn, S., and Metcalf, D. (1996) 'Trade Union Law since 1979', in Beardwell I, Contemporary Industrial Relations. A Critical Analysis, Oxford, Oxford University Press.

Durkin, T. (1997) 'Using computers in strategic qualitative research', in Miller, G., and Dingwall, R. (eds), Context and method in qualitative research, London Sage Publications Ltd.

Easterby-Smith, M., Thorpe, R., and Lowe, A. (1991) Management Research, London, Sage Publications Ltd.

Edelstein, J. D. (1967) 'An Organisational Theory of Union Democracy' American Sociological Review, 32, 19-39.

Edelstein, J. D., and Warner, M. (1979) Comparative Union Democracy: Organisation and Opposition in British and American Unions, New Jersey, Transaction Books.

Edwards, P. K. (ed.) (1995) Industrial Relations: Theory and Practice in Britain, Oxford, Blackwell.

Edwards, J. E., Thomas, M. D., Rosenfeld, P., and Booth-Kewley, S. (1997) How to Conduct Organisational Surveys, Thousand Oaks, California, Sage Publications.

Eisenhardt, K. M. (1989) 'Building theories from case study research', Academy of Management Review, 14 (4), 352-550.

Elgar, J. (1997) 'Industrial Action Ballots: an analysis of the development of law and practice', Ph.D. thesis, London School of Economics, University of London.

Elgar, J., and Simpson, R. (1993) Union Negotiators, Industrial Action and the Law: Report of a Survey of Negotiators in 25 Unions 1991-1992, Centre for Economic Performance Discussion Paper No 171, London School of Economics, University of London.

Elgar, J., and Simpson, R. (1996) Industrial Action Ballots and the Law, London, Institute of Employment Rights.

Elias, P., and Ewing, K. (1987) Trade Union Democracy, Members' Rights and The Law, London, Mansell.

England, J., and Weekes, B. (1985) 'Trade Unions and the State: A Review of the Crisis', in McCarthy, Trade Unions, Reading, Pelican.

Evered, R. and Louis, M. R. (1991) 'Alternative perspectives in the organisational sciences: inquiry from the inside and inquiry from the outside', Smith, N. C. and in Dainty, P. (eds), The Management Research Handbook, London, Routledge.

Ewing, K. (1988) Britain and the ILO, London, Institute of Employment Rights.

Ewing, K. (2003) 'The Implications of Wilson and Palmer', Industrial Relations Journal, 32, 37-42.

Fatchett, D. (1987) Trade Unions and Politics in the 1980s: The 1984 Act and Political Fund Ballots, London, Croom Helm.

Fatchett, D. (1992) 'Ballots, Picketing and Strikes', in Towers, B., A Handbook of Industrial Relations Practice, London, Kogan Page.

Fielding, N. G., and Fielding, J. L. (1986) Linking Data, Newbury Park, California, Sage Publications.

Fox-Wolfgramm, S., Boal, J., and Hunt, J (1998) 'Organisational Adaptation to Constitutional Change: A Comparative Study of First Order Change in Prospector and Defender Banks', Administrative Science Quarterly, 43, 87-126.

Fairbrother, P. (1983) All Those in Favour: The Politics of Trade Union Democracy, London, Pluto Press.

Flanders, A. (1974) 'The Tradition of Voluntarism', British Journal of Industrial Relations, 12 (3), 352-70.

Flanders, A. (1975) Management and the Unions: The theory and reform of industrial relations, London, Faber.

Fletcher, R. (1972) Trade Unions, London, Longmans.

Flood, P. (1988) Trade Union Government and Membership Participation in the Irish Transport and General Workers' Union, Ph.D.thesis, London School of Economics, Department of Industrial Relations, University of London.

Forester, T. (1976) 'How democratic are the unions?', New Society, May, 343-5.

Fosh, P., Undy, R., Morris, H., Smith, P., and Martin, R. (1993) 'Union Autonomy a Terminal Case in the UK?', Employee Relations, 15, 3-21.

Fosh, P., Morris, H., Martin, R., Smith, P., and Undy, R. (1993) 'Politics, Pragmatism and Ideology: The Wellsprings of Conservative Union Legislation (1979-1992)', Industrial Law Journal 22 (1), 14-31.

Fosh, P., and Morris, H. (2000) 'Measuring Trade Union Democracy: The Case of the Civil and Public Services Union', British Journal of Industrial Relations 38 (1), 95-114.

Fredman, S. (1992) 'The New Rights: Labour Law and Ideology in the Thatcher Years', Oxford Journal of Legal Studies, 12 (1), 25-44.

Gamble, A. (1994) The Free Economy and the Strong State: the Politics of

Thatcherism, Basingstoke, Macmillan.

Gill, J., and Johnson, P. (1991) Research Methods for Managers, London, Paul Chapman Publishing Limited.

Gill, J., and Johnson, P. (1997) Research Methods for Managers, 2nd ed, London, Paul Chapman Publishing Limited.

Gilmour, I. (1992) Dancing with Dogma: Britain Under Thatcherism, London, Simon and Schuster.

Glaser, B., and Strauss, A. (1967) The Discovery of Grounded Theory: Strategies for Qualitative Research, New York, Aldine.

Goldthorpe, J. H., Lockwood, D., and Bechhofer, F. (1968), The Affluent Worker: Industrial Attitudes and Behaviour, London, Cambridge University Press.

Goldstein, J. (1952) The Government of British Trade Unions, Glencoe, Free Press.

Goldhor, H. (1972) An Introduction to Scientific Research in Librarianship, Urbana, University of Illinois.

Gospel, H., and Lockwood, G. (1999) 'Disclosure of Information to Trade Unions Revisited', Industrial Law Journal, 28 (3), 233-248.

Gospel, H., and Palmer, G. (1993) British Industrial Relations, London, Routledge.

Grant, D. (1987)'Mrs Thatcher's Own Goal: Unions and the Political Funds Ballots', Parliamentary Affairs, 40 (1), 73-9.

Grant, D., and Lockwood, G. (1999) 'Trade Unions, Political Fund Ballots and Party Political Funding', Policy Studies, 20 (2), 77-94.

Guba, E. G., and Lincoln, Y. S. (1994) 'Competing paradigms in qualitative research', in Denzin, N. K., and Lincoln, Y. S. (eds) Handbook of Qualitative Research, Thousand Oaks, California, Sage Publications.

Hall, S. (1988) 'The great moving right show', in Hall, S. and Jacques, M. The Politics of Thatcherism, London, Lawrence and Wishart.

Hamel, J., Dufour, S., and Fortin, D. (1993), 'Case study methods'. Qualitative Research Methods, vol. 32. Newbury Park, Sage Publications Inc.

Hagan, F. (2000) Research Methods in Criminal Justice and Criminology, Boston, Allyn and Bacon.

Hammersley, M., and Atkinson, P. 1983) Ethnography: Principles in Practice, London, Tavistock.

Hart, S. J. (1991), 'A first-timer's guide to the collection and analysis of interview data from senior managers', Smith, N. C., and Dainty, P. (eds) The Management Research Handbook, London, Routledge.

Hayek, F. (1960) The Constitution of Liberty, London, Routledge and Kegan Paul.

Hayek, F. (1982) Law, Legislation and Liberty, London, Routledge and Kegan Paul.

Hayek, F. (1984) 1980s Unemployment and the Unions, 2nd edn. Hobart Paper no. 87,

London, Institute of Economic Affairs.

Hanson, G., and Mather, G. (1988) Striking Out Strikes, Hobart Paper no. 110, Institute of Economic Affairs, London.

Hands, S. (1971) Trade Union Government, Blackwell, Oxford.

Hartley, J., Kelly, J., and Nicholson, N. (1983) Steel Strike: A Case Study in Industrial Relations, London, Basford.

Hartman, H. (1979) 'Capitalism, Patriarchy, and Job Segregation by Sex', in Zillah Eisenstein (ed.) Capitalism, Patriarchy and the Case for Socialist Feminism, London, Monthly Review Press.

Hemingway, J. (1978) Conflict and Democracy: Studies in Trade Union Government, London, Clarendon Press.

Hendy, J. (1993) The Conservative Employment Laws: A National and International Assessment, London, Institute of Employment Rights.

Hirschman, A. (1970) Exit, Voice and Loyalty: Responses to Decline in Firms, Organisations and States, Harvard University Press, Cambridge.

Hitchcock, J., and Wilson, H. (1992) 'Personal Risking: Lesbian Self-Disclosure to Health Professionals', Nursing Research 41, 178-83.

Honeyball, S., and Bowers, J. (2003) Textbook on Labour Law, 7th edn. Oxford, Oxford University Press.

Howe, M. A. and Gaeddert, D. (1991) 'Customer survey research: extending the partnership', in J. W. Jones, B. D. Steffy and D. W. Bray (eds), Applying Psychology in Business: The Professionals, Lexington, Lexington Books.

Hoxie, R., F. (1966) Trade Unionism in the United States, New York, Century Crofts.

Huberman, A. M., and Miles, M. B. (1998) 'Data management and analysis methods', in N. K. Denzin and Y. Lincoln, (eds), Collecting and Interpreting Qualitative Materials, (pp, 179-210), Thousand Oaks, Sage Publications, California.

Huczynski, A., and Buchanan, D., (1991) Organisational Behaviour: An Introductory Text 2nd ed. London, Prentice Hall International (UK) Ltd.

Hughes, J. (1968) Trade Union Structure and Government, London, HMSO.

Humphreys, N. (1999) Trade Union Law, London, Blackstone Press.

Hutt, A. (1941) British Trade Unionism: A Short History, London, Lawrence and Wishart Ltd.

Hyman, R. (1975) Industrial Relations: A Marxist Introduction, London, Macmillan, London.

Hyman, R. (1983) 'Trade Unions: Structure, Policies and Politics', in G. S. Bain (ed.) Industrial Relations in Great Britain, Oxford, Blackwell.

Hyman, R., Price, P., and Terry, T. (1988) Reshaping the NUR: Reorganisation and Reconstitution of the Union, The Warwick Report, Warwick, Industrial Relations Research Unit.

IRLIB, (1982) 'The IRLBI Guide to the Employment Protection Act, Part 3. Trade Union Immunities', London, Industrial Relations Legal Information Bulletin 208, 2-17.

Incomes Data Services (1992) Management and the Law, IDS Focus no. 62, March.

Incomes Data Services (2000) Trade Unions Handbook, London, IDS.

Inns of Court Conservative and Unionist Society (1958) A Giant's Strength: Some Thoughts on the Constitutional and Legal Position of Trade Unions in England, London, Inns of Court Conservative and Unionist Society.

Irvine, M. (2001) 'Unions need to speak up for their members', Guardian, July 5th.

James, L. (1984) Power in a Trade Union, Cambridge, Cambridge University Press.

Jessop, B., Bonnet, K., and Bromley, S. (1990) 'Farewell to Thatcherism? Neo-liberalism and New Times', New Left Review, 147, 32.

Judd, C. M., Smith, E. R., Kidder, L. H. (1991) Research Methods in Social Relations, 6th edn., Fort Worth, Harcourt Brace.

Kahn-Freund, O. (1979) 'Kahn Freund and labour law: an outline critique', Industrial Law Journal 8, 202.

Kahn-Freund O., (1979) Heritage and Adjustment: Essays in Labour Law, London, Stevens.

Kahn-Freund, O. (1978) Selected Writings, London, Stevens.

Kahn-Freund, O. (1977) Labour and the Law, London, Stevens.

Kessler, S., and Bayliss, B. (1995) Contemporary British Industrial Relations, Basingstoke, Macmillan.

Kidner, R. (1984) 'Trade Union Democracy: Election of Trade Union Officers', Industrial Law Journal, 13, 97-114.

Klandermans, B. (1984) 'Mobilisation and Participation: Social-Psychological Expansions of Resource Mobilisation Theory', American Sociological Review, 49, 583.

Kirk. J., and Miller, .M. L. (1986) Reliability and Validity in Qualitative Data Research, Qualitative Research Methods, Newbury Park, CA, Sage.

Klandermans, Bert (1986) 'Psychology and Trade Union Participation: Joining, Acting, Quitting', Journal of Occupational Psychology, 59, 189.

Kukathas, C., (1989) Hayek and Modern Liberalism, Clarendon Press, Oxford.

Lane, T. (1974) The Union Makes us Strong, Arrow Books, London.

Labour Research (1995) Company Funding and the Conservatives, London, Labour Research.

Lazzari, M., Ford, M., and Haughtey, J. (1996) 'Making a Difference: Women of Action in the Community,, Social Work, 41, 97-205.

Letwin, S. (1992) The Anatomy of Thatcherism, London, Fontana.

Leopold, J. (1986) 'Trade Union Political Funds: A Retrospective Analysis', Industrial Relations Journal, 17 (4), 287-303.

Leopold, J. (1988) 'Moving the Status Quo: The Growth of Trade Union Political Funds', Industrial Relations Journal, 19 (4), 287-95.

Leopold, J. (1997) 'Trade Unions, Political Fund Ballots and the Labour Party', British Journal of Industrial Relations, 35, 23-38.

Lewis, R., and Simpson, R. (1981), Striking a Balance?, Martin Robertson, Oxford.

Lipset, S. M.., Trow, M. A., and Coleman, J. S. (1956) Union Democracy, New York, Free Press.

Locke, K. (1996) 'Rewriting the Discovery of Grounded Theory after 25 Years', Journal of Management Enquiry, 5, 239-45.

Lockwood, G. (2000), 'An Epitaph to CROTUM and CPAUIA', Journal of Industrial Relations, 31 (5), 471-81.

Lockwood, G. (2001) Trade Unions and Organisational Change, Trade Union Growth Conference, Conference Proceedings, Canada, University of Toronto.

Lockwood, G., and Williams, K. (2003) 'Collective Rights: Recognition, Representation, and Industrial Action', in Towers, B. (ed.), The Handbook of Employment Relations Law and Practice, London, Kogan Page.

Lockwood, G. (2004) 'Trade Unions and Conservative Legislation', in Verma A. and Kochran, T. (eds), Unions in the 21st Century London, Palgrave Publishing.

Mackie, K. J., (1992) 'The Legal Background: An Overview', in Towers, B. (ed.), The Handbook of Employment Relations Law and Practice, London, Kogan Page.

Martin, R. (1968) 'Union Democracy: An Explanatory Framework', in Sociology, vol. 2, 205-20.

Martin, R., Undy, R., Fosh., P., Morris, H., and Smith, P. (1991) 'The Decollectivisation of Trade Unions? Ballots and Collective Bargaining', Industrial Relations Journal, 22, 197.

Martin, R., Undy, R., Fosh, P., Morris, H., and Smith, P. (1995) 'The Legislative Reform of Union Government 1979-1994', Industrial Relations Journal, 26, 2, 146.

Magrath, C. P. (1958), 'Democracy in Overalls: The Futile Quest for Union Democracy', Industrial and Labour Relations Review, 12, 503-25.

Marsden, D. (1985) 'Chronicle - Industrial Relations in the UK, August-November 1984', British Journal of Industrial Relations, 23, 139-58.

Marsh, D. (1992) The New Politics of British Trade Unions, London, Macmillan.

Maxwell, J. A. (1996) Qualitative Research Design: An Interactive Approach, Applied Social Research Methods Series, vol. 41. Thousand Oaks, California, Sage Publications.

McCarthy, W, E,J. (1981) quoted in Steele, M. (1990), 'Changing the Rules: Pressures on Trade Union Constitutions', in Fosh, P. and Heery, E. (eds.) Trade Unions and Their Members, Basingstoke, Macmillan.

McCarthy, W. E. J. (1985) Trade Unions, 2nd. ed. Middlesex, Penguin.

McCarthy, W. (1992) Legal Intervention in Industrial Relations, Oxford, Blackwell.

McIlroy, J. (1988) Trade Unions in Britain Today, Manchester, Manchester University Press.

McIlroy, J. (1995) Trade Unions in Britain Today, Manchester, Manchester University Press.

McKay, S. (1996) The Law on Industrial Action Under the Conservatives, London, Institute of Employment Rights.

McKendrick, E. (1988) 'The Rights of Trade Union Members, Part 1 of the Employment Act 1988', Industrial Law Journal 17, 141-147.

McKillop, N. (1960) The Lighted Flame: A History of ASLEF, London, Thomas Nelson.

McMullen, J. (1991) Industrial Relations Law, London, Institute of Employment Rights.

McShane, S., L. (1986) 'The Multidimensionality of Union Participation', Journal of Occupational Psychology, 59, 177-187.

Metcalf, D., and Milner, S. (1993) New Perspectives in Industrial Relations, London, Routledge.

Michels, R. (1911) Political Parties, London, Dover.

Michels, R. (1962) Political Parties, New York, Free Press.

Miller, D. C. (1991) Handbook of Research Design and Social Measurement, 5th edn., Newbury Park, Sage Publications.

Miller, K., and Steele, M. (1993) 'Employment legislation: Thatcher and after', Industrial Relations Journal, 24 (3), 224- 35.

Miles, M., and Huberman, A. M, (1994). Qualitative Data Analysis: An Expanded Sourcebook, 2nd edn., Thousand Oaks, California, Sage Publications.

Millward, N., Stevens, M., Smart, D., and Hawes W. (1992) Workplace Industrial Relations in Transition, Dartmouth, Aldershot.

Minford, P. (1988) 'Mrs Thatchers Economic Reform Programme', in Skidelsky, R.,

Thatcherism, London, Chatto and Windus.

Moher, J. (1995) Trade Unions and the Law, The Politics of Change, London, Institute of Employment Rights.

Moran, M. (1977) The Politics of Industrial Relations, London, Macmillan.

Morgan, G., and Smircich, L. (1980) 'The case for qualitative research', Academy of Management Review, 5 (4), 491-500.

Morgan, P., and Joe, K. (1996) 'Citizens and Outlaws: the private lives and public lifestyles of women in the illicit drug economy', Journal of Drug Issues, 26, 125-42.

Myers, M. D. (1977) 'Qualitative Research in Information Systems', MIS Quarterly, 21, 241-42.

National Association of Teachers in Further and Higher Education, (2000) Trade Union Organisation and Structure, London, NATFHE publication.

Nairns, J. (1999) Employment Law, London, Pitman Publishing.

O'Regan, C. (1991) 'The Labour Injunction and Trade Unions', Ph.D. thesis,

Institute of Advanced Legal Studies, University of London.

Orth, J. (1991) Combination and Conspiracy: A Legal History of Trade Unionism 1721-1906, Oxford, Oxford University Press.

Patton, M. Q. (1990) How to use Qualitative Methods in Evaluation, Newbury Park, California, Sage Publications.

Perline, M., and Lorenz, V. (1970) 'Factors Influencing Member Participation in Trade Unions': The American Journal of Economics and Sociology, 424-38.

Perlman, M. (1962) Democracy in the International Association of Machinists, New York,Wiley.

Perrins, B. (1985) Trade Union Law, London, Butterworths.

Pfaffenberger, B. (1988) 'Microcomputer applications in qualitative research', Qualitative Research Methods, vol. 14, Newbury Park, Sage Publications.

Pinto-Duschinsky, M. (1981) British Political Finance 1830-1980, Washington DC, American Enterprise Institute.

Pinto-Duschinsky, M. (1989) 'Financing the General Election 1987', in Crewe, I., and Harrop, M. (eds) Political Communications - The General Election Campaign of 1987, Cambridge, Cambridge University Press.

Prior, J. (1986) A Balance of Power, London, Hamish Hamilton.

Radice, G. (1978), The Industrial Democrats: Trade Unions in an Uncertain World, London, Allen and Unwin.

Rennie, D. (1994) 'Clients' Defence in Psychotherapy', Journal of Counselling Psychology, 41, 427-35.

Ramaswamy, E (1977) 'The Participatory Dimension, of Trade Union Democracy', Sociology ,11 (3), 337-43.

Ranelagh, J. (1992) Thatcher's Road, London, Fontana.

Richardson, R. (1996) 'Coercion and the Trade Unions: A Reconsideration of Hayek', British Journal of Industrial Relations, 34.2, 219-36.

Roberts, B. C. (1962) Trade Unions in a Free Society, London, Hutchinson.

Ruspini, J. (1999) Secondary Analysis of Qualitative Data, Social Research Update, Surrey, University of Surrey.

Sargeant, M. (2003) Employment Law, London, Longman.

Schwandt, T. A. (1997) Qualitative Inquiry: A Dictionary of Terms, Thousand Oaks, Sage Publications.

Sheatsley, P. B. (1983) 'Questionnaire Construction and Item Writing', in P. H. Rossi, J. D. Wright and A. B. Anderson (eds), Handbook of Survey Research, San Diego, Academic Press.

Silverman, D. (1993) Interpreting Qualitative Data: Methods for Analysing Talk, Text and Interaction, London, Sage Publications Ltd.

Silverman, D. (1997) 'Validity and credibility in qualitative research', in G. Miller and R. Dingwall (eds), Context and Method in Qualitative Research, pp. 12-25, London, Sage Publications.

Silverman, D. (2000) Doing Qualitative Research: A Practical Handbook, London, Sage Publications Ltd.

Shipman, M. (1973) The Limitations of Social Research, 2nd edn. London, Longman.

Shipman, M. (1988) The limitations of Social Research 3rd edn. London, Longman.

Simpson, R. (1993) 'Individualism versus Collectivism: An Evaluation of Section 14 of the Trade Union Reform and Employment Rights Act 1993', Industrial Law Journal, 22, 181-86.

Smith, M. (2002) 'Dinosaurs Have Some Backbone', Socialist Review, 265, 1-4.

Smith, P. (1993) 'Ballots and Union Government in the 1980s', British Journal of Industrial Relations, 31 (3), 365-82.

Spinirad, W. (1970) 'Correlates of Trade Union Participation: A Summary of the Literature', American Sociological Review, 25(2), 237-43.

Stake, R. E. (1995) The Art of Case Study Research, Thousand Oaks, Sage.

Steele, M. (1990) 'Changing the Rules: Pressures on Trade Union Constitutions', in Fosh, P., and Heery, E. (eds) Trade Unions and Their Members, Macmillan, Basingstoke.

Steele, M., Miller, K., and Gennard, J. (1986) 'The Trade Union Act 1984: Political Funds Ballots', British Journal of Industrial Relations, 24 (4), 443-67.

Stein, E. (1960) 'The Dilemma of Union Democracy', Annals of the American Academy of Political Science, 310 (November), 47.

Stewart, D. W. and Kamins, M. A. (1993) Secondary Research: Information Sources and Methods, Newbury Park, Sage Publications.

Strauss, G., and Sayles L. R. (1953) The Local Union: Its Place in the Industrial Plant, New York, Harper and Brothers.

Strauss, A., and Corbin, J. (1990) Basics of Qualitative Research, Grounded Theory Procedures and Techniques, Newbury Park, Sage.

Strinati, D. (1982) Capitalism, the State and Industrial Relations, London, Croom Helm.

Supiot, A. (1999) Transformation of Labour and Future of Labour Law in Europe, Brussels, European Commission.

Syrett, K. (1997) 'Language, Legislation and Labour: Trade Union Responses to Conservative Government Legislation', Ph.D. thesis, London School of Economics, University of London.

Syrett, K. (1998) 'Immunity, Privilege and Right: British Trade Unions and the Language of Labour Law Reform', Journal of Law in Society, 25 (3), 338-406, Oxford, Blackwell.

Taylor, R. (1993) The Trade Union Question in British Politics: Government and Unions since 1945, Oxford, Blackwell.

Tannenbaum, A. S., and Kahn R. L.(1958) Participation in Union Locals, Evanston, Illinois, Row and Peterson.

Tebbit, N. (1988) Upwardly Mobile, London, Weidenfeld and Nicholson.

Terry, M. (1996) 'Negotiating the Government of Unison: Union Democracy in Theory and Practice', British Journal of Industrial Relations 34 (1), 87-110.

Tomita, K. (1998) 'The Consequences of Belonging: Conflict Management Techniques Among Japanese Americans', Journal of Elder Abuse and Neglect, 9, 41-63.

Towers, B. (2003) The Handbook of Employment Relations, Law and Practice, London, Kogan Page.

TUC (1980) Annual Report, London, TUC.

TUC (1981) Annual Report, London, TUC.

TUC (1984) TUC Strategy, London, TUC.

TUC (1986) Annual Report, London, TUC.

TUC (1998) Focus on Balloting and Industrial Action: Industrial Trends, London, TUC.

TUC (1989) Annual Report, London, TUC.

TUC (1990) Annual Report, London, TUC.

TUCC (1995) Political Fund Ballots 1994-95: Report of a Successful Campaign, London, TUCC.

Turner, H. A. (1962) Trade Union Growth, Structure and Policy, London, Allen and Unwin.

Undy, R., Ellis, V., McCarthy, and Halmos, A. M. (1981) Change in Trade Unions, London, Hutchinson.

Undy, R., and Martin, R. (1984) Ballots and Trade Union Democracy, Oxford, Blackwell.

Undy, R. (1989) 'Trade Union Democracy: Union Government and Union Democracy', in Clegg, C., Kemp, N., and Legge, K. Case Studies in Organizational Behaviour, Liverpool, Paul Chapman Publishing Ltd.

Undy, R., Fosh, P, Morris, H., Smith, P., and Martin, R. (1996) Managing the Unions: The Impact of Legislation on Trade Union Behaviour, Oxford, Oxford University Press.

Vogt, P. W. (1993) Dictionary of Statistics and Methodology, Newbury Park, Sage Publications.

Waddington, J. (2003) 'Heightening Tensions in Relations between Trade Unions and the Labour Government', British Journal of Industrial Relations, 41(2), 335-58.

Ward, T., Fon, S., Hudson, M., and McCormack, J. (1998) 'A Descriptive Model of Dysfunctional Cognitions and Child Molesters', Journal of Interpersonal Violence, 13, 129-35.

Webb, S., and Webb, B. (1920a) A History of Trade Union and Industrial Democracy, London, Longman.

Webb, S., and Webb, B. (1920b) Industrial Democracy, London, Green and Co.

Wedderburn, Lord (1984) 'Labour Law now: a hold and a nudge', Industrial Law Journal, 13, 73.

Wedderburn, Lord (1986) The Worker and The Law, Harmondsworth, Penguin.

Wedderburn, Lord (1988) 'Trade Union Democracy and State Regulation, Labour Law and Freedom', Bulletin of Comparative Labour Relations, 17, 180-211.

Wedderburn, Lord (1989) Freedom of Association and Philosophies of Labour Law, Industrial Law Journal, 18, 1-38.

Wedderburn, Lord (1991) 'Philosophies of Labour Law' in Employment Rights in Britain and Europe: Selected Papers in Labour Law, London, Lawrence and Wishart.

Welch, R. (1993) 'The Behavioural Impact on Trade Unionists of the Trade Union Legislation of the 1980s', Industrial Law Journal, vol.24, no.3, 236-41.

Welch, R. (2003) New Labour, New Unionism and Overcoming the Dichotomy between the Individual and the Collective, Conference Proceedings, Nottingham, University of Nottingham.

Werner, O. (1992) 'How to Record Activities, Cultural Anthropology', Methods Newsletter, 4 (2), 1-3.

Werner, O., and Schoepfle, G. (1987) Systematic Fieldwork: Foundations of Ethnography and Interviewing, Newbury Park, Sage.

Weekes, B., Mellish, M., Dickens, L., and Lloyd, J. (1975) Industrial Relations and the Limits of the Law, Blackwell, Oxford.

Willman, P. (1989) 'The Logic of Market Share Trade Unionism: Is Membership Decline Inevitable?, Industrial Relations Journal, 20.

Willman, P., Morris, T., and Ashton, B. (1993) Union Business: Trade Union Organisation and Financial Reform in the Thatcher Years, Cambridge, Cambridge University Press.

Willets, D. (1992), Modern Conservatism, Harmondsworth, Penguin.

Wrigley, C. (1995) British Trade Unions 1945-1995, Manchester, Manchester University Press.

Yamamoto, N., and Wallhagen, H. (1998) 'Service Use by Family Care Givers in Japan', Social Science and Medicine, 47, 677-91.

Yin, R. K. (1994), Case Study Research: Design and Methods, Applied Social Research Methods Series, Thousand Oaks, Sage Publications.

Yin, R. K. (1998) 'The Abridged Version of Case Study Research: Design and Method', in L. Bickman and D.K. Rog (eds), Handbook of Applied Social Research Methods, Thousaand Oaks, Sage.

Young, H. (1998) 'Moving to Congregate Housing: the last chosen home', Journal of Ageing Studies, 12, 149-65.

Appendix 1 Specimen Letter to Trade Union

The Management Centre
King's College, London
London University
Stamford Street
London
April 20th 1999

Graeme Lockwood
Direct line Tel/Fax 0207 848 4441
Mr Bill Morris General Secretary TGWU
Central Office
Transport House
Palace Street
Victoria

Dear Mr Morris

Further to our telephone conversation today I herewith include some preliminary details regarding my research project. I am attempting to evaluate the impact of the legislation introduced by all Conservative governments holding office throughout the 1980s and the early *1990s* on union government. I suspect I will also need to take account of any relevant changes made by the Labour government arising out of Fairness at Work. I am now at the stage where I am seeking trade unions that would be willing to allow me to access their organisation to enable me to study the impact of the legislation. The research forms part of my PhD.

Most of the current research in this area most notably by Undy, *et al* (1996). has focused on outcomes of the legislation in specific areas such as leadership, policy, and industrial action. I am rather more interested at looking at internal changes within trade unions over time through the application of sequence analysis. In particular I would need to look at:

- Constitutional changes
- Rule changes
- Relationships between the union and its members
- Changes to democratic processes and institutions
- Trade union administration

I look forward to hearing from you in the near future

Many thanks,
Graeme Lockwood. (Lecturer in Business Law)

Appendix 2 Interview Protocol for Trade Union Officials

1) Has the legal requirement to hold secret postal ballots for union elections, industrial action and the political fund resulted in any specific changes to union rules, processes or procedures?

2) If prior to 1984 senior officials were appointed, how has the fact that some or all are now subject to election changed relationships within the union and to what extent if any has this impacted on union government or democracy?

3) Does the union have a political fund and what are the relevant voting figures in the ballots held to date?

4) In what way (if at all) has secret ballots stimulated greater organised political competition/factionalism within the union?

5) To what extent (if at all) has the union undergone any changes to the financial affairs and administrative procedures due to the law or action taken under the law?

6) To what extent (if at all) did then Conservative Government legislation reduce the influence of shop stewards and union activists in policymaking and decision-making?

7) Have secret ballots produced more moderate or accountable trade unions?

8) In what ways has the union been made more responsible and accountable for its own actions and actions of its officials as a result of Conservative legislation?

9) What was the perception held of CROTUM/CPAUIA& CO, and has the union had any dealings with such bodies?

10) Did the union make a positive decision to comply with Conservative legislation?

11) Has the union made any attempts to strengthen lay membership democracy and in what ways are the views of the membership ascertained?

12) What factors have caused changes to union rules, procedures, institutions & practices, what is the weighting/importance of such factors?

13) On how many occasions has industrial action been seriously considered since balloting was introduced and was this a strike or action short of a strike?

14) Before industrial action took place, did any employer threaten legal proceedings against the the union and on what grounds?

15) If threatened industrial action didn't take place this was because the dispute was settled by negotiation or for some other reason?

16) Did any employer placed threats on members if they took industrial action?

17) Since the introduction of ballots how many ballots have been held and what number of votes won and lost?

18) Who is responsible for organising industrial action ballots

19) During the 1980s and 1990s were members more reluctant to take industrial action?

20) Have industrial action ballots been a good thing for trade unions?

21) Are union officials more accountable to members than they were previously?

24) Have industrial action ballots centralised decision-making within trade unions?

25) Did the switch from workplace ballots to secret postal ballots have any influence on turnout or membership decision-making.

Appendix 3 Interview Protocol for Lay Members

1) What attempt if any have the union made to improve trade union democracy?

2) In what ways would you like to see the opportunities for membership participation improved?

3) What are the unions' strengths and weaknesses, and how could weaknesses be remedied?

4) How could the union improve communications with lay members?

5) To what extent do secret ballots encourage individual members to participate in trade union affairs?

6) Does the member think that Conservative legislation has made the trade union more moderate?

7) What factors have caused change to union structure and operation?

8) Is the branch the most important mechanism through which the membership can participate in trade union business?

Appendix 4 Interview Protocol for CROTUM

1) What impact has CROTUM had on the rights of trade union members?

2) What are the reason(s) for the low level of complaints to CROTUM?

3) What has been the impact of the Commissioners role on trade union democracy?

4) What cases has CROTUM dealt with in respect of union elections, industrial action, the political fund and the enforcement of individual member rights?

5) What are the strengths and weaknesses of CROTUM?

6) What is the view of CROTUM on abolition of office and the transfer of powers to CO with particular emphasis on the implications for union democracy?

Appendix 5 Interview Protocol for Assistant Commissioner for the Rights of Trade Union Members

1) What impact has CROTUM had on the rights of trade union members?

2) What are the reason(s) for the low level of complaints to CROTUM?

3) What has been the impact of the Commissioners role on trade union democracy?

4) What cases has CROTUM dealt with in respect of union elections, industrial action, the political fund and the enforcement of individual member rights?

5) What are the strengths and weaknesses of CROTUM?

6) What is the view of CROTUM on abolition of office and the transfer of powers to CO with particular emphasis on the implications for union democracy?

Appendix 6 Interview Protocol for Certification Officer

1) What are the views of the CO as to successive Conservative government's legislation and its impact on the internal affairs of trade unions?

2) What investigations has the CO dealt with in respect of union elections, industrial action, the political fund and the enforcement of individual member rights?

3) Which trade unions have been required to alter their processes, institutions and procedures because of contact with the CO or action taken by the CO under the law?

4) What are the main benefits of the CO's role to members and its implications for union democracy?

5) What view does the CO have of the decision to abolish CROTUM and transfer the powers to CO?

6) How and why do trade unions need to modernise their political processes if at all?

Appendix 7 Interview Protocol for Deputy General Secretary TUC

1) What are the main changes produced by the Conservative legislation in respect of union decision-making and leadership?

2) What was the policy of the TUC to the then Conservative legislation and the reasons for changes to policy?

3) What aspects of Conservative legislation caused trade unions the most difficulty?

4) What are the views of TUC on the regulation of trade unions by external agencies?

5) To what extent does the TUC think that trade unions need to modernise their political processes?

6) What factors have caused changes to union rules, procedures, institutions & practices, together with the relative weighting/importance of such factors?